

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ZENIMAX MEDIA INC. and ID) 3:14-CV-1849-K
SOFTWARE LLC)
Plaintiffs,)
)
VS.)
) DALLAS, TEXAS
)
OCULUS VR, LLC, PALMER)
LUCKEY, FACEBOOK, INC.,)
BRENDAN IRIBE and JOHN)
CARMACK,)
Defendants.) January 17, 2017

TRANSCRIPT OF JURY TRIAL, VOLUME 6
BEFORE THE HONORABLE ED KINKEADE
UNITED STATES DISTRICT JUDGE

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1 JURY TRIAL - JANUARY 17, 2017

2 P R O C E E D I N G S

3 THE COURT: Okay. Here we go. Everybody get a good
4 lunch?

5 MS. WILKINSON: Yes.

6 MR. SAMMI: Yes, sir.

7 THE COURT: We did? Okay. We did, too.

8 If y'all haven't been to that off-site kitchen, it's
9 a good place, for y'all out-of-towners. It's kind of a --
10 well, what's that little area?

11 what's that area called we go to over there, you
12 know, that has all those experimental --

13 THE CLERK: Trinity Groves.

14 THE COURT: The Trinity Groves area. It's really
15 good. I think they have free rent, where they are, but it's
16 good. It's a good place.

17 Okay.

18 MR. SAMMI: Your Honor, I'd like to put something on
19 the record.

20 THE COURT: What?

21 MR. SAMMI: Just very briefly.

22 THE COURT: Go ahead, Mr. Sammi.

23 MR. SAMMI: Thank you, sir.

24 we'd like to put on the record Plaintiffs' continuing
25 objection to the Court's prior ruling excluding PX81. That is

1 an indemnity agreement that's --

2 THE COURT: Oh, yeah. And I do remember all of your
3 objections --

4 MR. SAMMI: Yes, sir.

5 THE COURT: -- that you've made for purposes -- and
6 that you have timely made those, and you have requested on
7 numerous occasions, and I told you to keep -- if you wanted to
8 keep trying, trying, that maybe it would get opened up. But I
9 don't think so yet.

10 MR. SAMMI: Your Honor, we have --

11 THE COURT: But you have another reason you think
12 it's opened up?

13 MR. SAMMI: We do.

14 The indemnity agreement discredits the testimony of
15 both Mr. Carmack and Mr. Zuckerberg. In that regard,
16 Mr. Carmack was aware of the agreement and Mr. Zuckerberg
17 testified at his deposition that he was aware of that
18 agreement.

19 THE COURT: Okay.

20 MR. SAMMI: And that agreement, the indemnity relates
21 directly to ZeniMax's concerns -- claims regarding virtual
22 reality technology.

23 THE COURT: Okay. I'm not changing my ruling yet,
24 but be persistent.

25 MR. SAMMI: I am, Your Honor. I am.

1 THE COURT: I know. I've noticed. It's okay.

2 All right. Are you ready?

3 Did you figure out your microphone thing?

4 MS. WILKINSON: I did, Your Honor.

5 THE COURT: Okay.

6 MS. WILKINSON: Thank you.

7 THE COURT: All right. Let's bring the jury in.

8 Did you get lunch, Mr. Zuckerberg?

9 THE WITNESS: I did.

10 THE COURT: Okay. Do you have water still?

11 THE WITNESS: I do.

12 THE COURT: Okay. Good.

13 (Pause)

14 THE COURT: David, hold up a sec. Hold it one sec.

15 No, it's okay. Go ahead and bring them in. I'm

16 ready. It's all right.

17 SECURITY OFFICER: All rise for the jury.

18 (Jury panel in)

19 THE COURT: Y'all be seated. Hope you enjoyed that
20 barbecue. Sammy's really good, isn't it? I knew it. I knew
21 it.

22 Okay, Ms. wilkinson.

23 MS. WILKINSON: Thank you, Your Honor.

24 THE COURT: Thank you.

25 Good afternoon, everyone.

1 BY MS. WILKINSON:

2 Q. Mr. --

3 THE COURT: I don't think you're on. You were into
4 the second verse of your song. You didn't have your microphone
5 on, Ms. Carey.

6 MS. WILKINSON: Oh.

7 THE COURT: Oh. That's not nice. I'm sorry.

8 MS. WILKINSON: It's still not working.

9 THE COURT: Did you get it turned on now?

10 MS. WILKINSON: I may need assistance. There we go.

11 THE COURT: You're good.

12 MS. WILKINSON: Ms. Nelson keeps me straight. All
13 right.

14 THE COURT: Pull it down just a hair. There you go.
15 There you go. That's fine.

16 MS. WILKINSON: Good? Sorry.

17 BY MS. WILKINSON:

18 Q. Mr. Zuckerberg, before we broke this morning, we were just
19 about to turn to how you first found out about Oculus.

20 Do you recall getting an email sometime in November
21 of 2013 from Mr. Andreessen?

22 A. Yes, I think we discussed this earlier.

23 Q. Okay. Take a look at Plaintiffs' Exhibit 1288, if you
24 could.

25 we're going to put it up on the screen. It was one

1 Mr. -- I don't know if Mr. Sammi gave you a copy, but I will
2 give you a copy.

3 MS. WILKINSON: Your Honor, may I approach?

4 THE COURT: Sure.

5 (Pause)

6 BY MS. WILKINSON:

7 Q. Now, just so we can get the timeline right for everybody,
8 at this time, November 5, 2013, was Mr. Andreessen on the face
9 board -- Facebook board?

10 A. Yes.

11 Q. All right. And had he invested at Oculus at this time?

12 A. No.

13 Q. All right. Go down to the bottom of this email to the
14 section you weren't shown during your testimony.

15 Read that last sentence --

16 A. I don't think so. He -- there may have been a seed round,
17 but I'm not sure.

18 Q. Okay. Take a look at the last sentence that says "I
19 might." If you could, just read that out loud if you wouldn't
20 mind.

21 A. Sure.

22 "I might ask you for a quick reference call/email
23 with the CEO. We are proposing investing, but beyond that, you
24 would really enjoy seeing it. It was a new experience."

25 Q. All right. Can you explain to us what a reference call is

1 in this context?

2 A. Sure. So Marc Andreessen was on the Facebook board of
3 directors, and he was -- he is a valuable director to the
4 company. He provides good advice. He helps us govern and run
5 the company. And as part of investing, you know, a company
6 like Oculus that is perceived to be a good option for investors
7 has a lot of options for -- a lot of investors are going to
8 want to try to invest in a company like that.

9 So Andreessen was trying to see if I could talk to
10 Brendan to tell Brendan about my experience with Marc on
11 Facebook's board, because he thought that would help Brendan
12 choose Marc as the investor in Oculus over others.

13 Q. Okay. So does this refresh your recollection of whether
14 Mr. Andreessen was an investor at this time in November of
15 2013?

16 A. Again, I don't think he was. I mean, this is a factual
17 thing that we can check otherwise, but frequently these
18 companies have multiple rounds of funding. It's possible that
19 they did a small round up front, but my -- my guess from this
20 and my understanding and what I remember is that he had not
21 invested at this point and certainly hadn't made the big
22 investment that they did after this.

23 Q. Okay. When he's asking you if you'll do a reference call,
24 first of all, did you agree to do that?

25 A. Yes.

1 Q. All right. And is this like a tryout? Could Mr. Iribe
2 have said, "We don't want your money. We'll take someone
3 else's money"? Is that the idea?

4 A. Yes. I mean, he and the company have whatever choice they
5 want of who they wanted to invest, and as a good company, I
6 think that they had a lot of options for investors, including a
7 lot of people who were Andreessen's competitors who were also
8 good investors.

9 Q. When you say Mr. Andreessen was on your board, was that
10 his full-time job in November of 2013?

11 A. No.

12 Q. What was his full-time job?

13 A. He runs an investment firm called Andreessen Horowitz with
14 his partner Ben Horowitz, and they've invested in a lot of
15 companies. And he is on the board of, I think, probably five
16 companies.

17 Q. Has he ever formed a company himself?

18 A. Yes. Earlier in his career he created Netscape, which was
19 the first internet browser, right? So what -- you know, you
20 might use Chrome or Apple Safari or Internet Explorer today.
21 Netscape was, you know, one of the first of those as a company.

22 Q. Do you find him to be a knowledgeable source about
23 technology and technology investments?

24 A. Yes.

25 Q. Let's take a look at DX448, if you could. That should be

1 in your binder up there. The index will tell you where it is.

2 It is DX448.

3 A. Okay.

4 Q. Do you see that?

5 A. Yes.

6 Q. Is that an email from you?

7 A. It is.

8 Q. On what date?

9 A. November 19.

10 Q. To whom?

11 A. To Andreessen.

12 Q. And what do you tell Mr. Andreessen in this email? You
13 can just -- we can focus on the second paragraph, if we could.

14 A. I'm telling him that I did the reference call with
15 Brendan.

16 Q. All right.

17 A. And that on the call Brendan seemed convinced that
18 Andreessen would be a helpful and a good investor.

19 Q. So in November of 2013, were you considering to be an
20 investor -- you, Facebook -- at that time, or just
21 Mr. Andreessen?

22 A. No, we were not.

23 Q. Okay. So I'm going to use MA for Mr. Andreessen, the
24 investor. Okay?

25 Did Mr. Iribe invite you to come see their

1 technology?

2 A. I think so, and I think what we discussed was that I would
3 see it the next time he came to the San Francisco Bay area.

4 Q. Okay. Did there come a time when he did set up a meeting
5 with you to show off the Oculus Rift?

6 A. Yes. I think it was the next time that he was in the
7 area.

8 Q. All right. And do you recall what -- what time period
9 that was? Was it in January of 2014 or February?

10 A. Yes. I think it was January, a couple of months after
11 this.

12 Q. All right. And -- do you remember the demonstration
13 itself, where it was at Facebook and what happened?

14 A. I remember some things about it. It was --

15 Q. Let's start with where -- where it was.

16 Just tell the jury a little bit about how Facebook is
17 set up.

18 Do y'all have private offices or how do you have it
19 laid out?

20 A. Sure. So we're set up so that everyone sits at a desk out
21 in the open, including me. So no one has a private office that
22 they work in. Although we -- we do have meetings room, right,
23 because people need to have meetings that are private. And
24 since I'm in meetings a lot of the time and Sheryl Sandberg,
25 our COO, was in meetings all the time, some of the senior

1 executives have rooms that are reserved for meetings. And I
2 think that the first meeting that we had with Brendan we did --
3 I don't remember why this was, but I think it was in Sheryl's
4 conference room.

5 Q. Do you recall who else was at the meeting?

6 A. I remember being -- after I saw the first couple of demos,
7 thinking that this was so important for some other folks to
8 see, that I remember pulling in our chief technology officer.

9 Q. Who is that?

10 A. Mike Schroepfer and our chief product guy, Chris Cox. And
11 I remember at least trying to go pull them in, and I think that
12 they were both there. One of them might have been out of town
13 that day, but I remember them both coming in.

14 There's also a person named Cory Ondrejka, who I
15 don't know if he was there for that specific meeting, but he
16 was pretty key in doing all of the technical diligence that we
17 started doing and trying to learn about the virtual reality
18 field which that meeting really kicked off and started for us.

19 Q. Do you recall what you saw in the Oculus headset, what
20 content was in there when you were getting the demonstration?

21 A. There were a few things. One of the demos that really
22 made an impression was there was this demo of a villa in
23 Tuscany in Italy, and I remember thinking that this was really
24 neat because I was sitting in a chair. And you can move
25 around, and as you move around, it like -- I'm just like in

1 real life. When you move, you see a different thing.

2 In this situation when you moved around with this
3 headset on, it -- you really felt like you were there. It
4 moved around exactly naturally how your head would move. And I
5 just remember feeling from that, okay, this is really cool.
6 I'm clearly not in Italy right now. I'm in this conference
7 room and I'm in California. But I almost have to convince
8 myself that I'm not in Italy because everything that I'm seeing
9 just makes it feel like I'm there, which is a really new
10 experience, right, if you think about that.

11 It sounds -- you know, a lot of times if you're
12 watching, you know, a basketball game on TV or a football game
13 or you're playing some video game, it's on a screen and you're
14 trying to convince yourself that it's real or you're a part of
15 it, but because it's on this 2D screen, you kind of have to
16 project and put yourself into that scene.

17 This was the opposite experience, right? You kind of
18 know that you're wearing this headset, and it's a screen, but
19 everything in your body tells you that it's real and you're
20 there, which is a pretty magical and cool experience.

21 Now, it wasn't perfect, but there were clear things
22 that needed to get worked out. You know, the early demos,
23 because it wasn't -- it didn't move around perfectly, you would
24 kind of feel motion sickness after using it for a little while.
25 So there was a lot of technology that needed to get built.

1 But I remember from that initial demo thinking, hey,
2 I have been thinking about VR for a long time, and I just
3 didn't realize -- I wasn't sure when it was going to be
4 possible to build something like this, and this seems to be
5 close enough that it's worth trying to look into whether we
6 should do more and invest in this now.

7 And that's what kicked off this process when I pulled
8 together Schroepfer and Chris Cox and Cory and Amin, our head
9 of our corporate development, to say, hey, this is something
10 that we should look into, go out there, see who is out there,
11 go get more demos, see what this company is doing, meet the
12 people, see who the best people are in this field, and see if
13 it is time for us to go do something here.

14 Q. Okay. Did you look over some slides and ask us to prepare
15 some demonstratives you've given, some demonstratives that you
16 saw?

17 A. Did I do that?

18 Q. Or review before we came to court?

19 A. It depends on which ones they are.

20 THE COURT: Wait, wait, wait. Mr. Sammi.

21 MR. SAMMI: Objection, Your Honor. I think the
22 witness has already said that he's not sure what -- I've never
23 seen this. May I see -- see a copy --

24 THE COURT: Sure.

25 MR. SAMMI: -- at least?

1 MS. WILKINSON: You can have the copy. I just wanted
2 to show Mr. --

3 MR. SAMMI: Sure. Sure. I would like one too.

4 MS. WILKINSON: -- Mr. Zuckerberg here. I have
5 another one.

6 Your Honor, may I approach and give this to
7 Mr. Zuckerberg?

8 THE COURT: Yes.

9 Let me know what your objection is.

10 MR. SAMMI: Yes, I will, once I --

11 MS. WILKINSON: Your Honor, I thought we weren't
12 going to show the 3D version, so these are just stills of what
13 he just described.

14 MR. SAMMI: Okay.

15 THE COURT: Are these demonstratives? Are you
16 offering them in evidence?

17 MS. WILKINSON: Just demonstratives, Your Honor.

18 MR. SAMMI: Your Honor, may I maintain a relevancy
19 objection to the issues in the case?

20 THE COURT: Wait. I missed that. I'm sorry.

21 MR. SAMMI: Maintain a relevance objection.

22 THE COURT: Relevance.

23 MR. SAMMI: Yes.

24 THE COURT: Okay. Overrule your objections.

25 MR. SAMMI: Okay.

1 THE COURT: It is admitted for demonstrative purposes
2 only, ladies and gentlemen.

3 BY MS. WILKINSON:

4 Q. Mr. Zuckerberg, did you just describe for us the scene you
5 saw in the Oculus Rift headset?

6 A. Yes. And I mean, these are shots that are taken from it,
7 but it really doesn't do it justice. I think you have to
8 experience it in VR to get a sense of -- because you can look
9 around and it feels like you're there, and that's -- there is
10 something to that experience that you can't quite capture on a
11 2D screen like this, but I do think these are screens that are
12 taken from that experience.

13 Q. Okay. So in January you had a demonstration, including of
14 this Tuscany scene.

15 would that be fair to say that's one of first times
16 you considered actually investing or buying Oculus?

17 A. Yeah, I think that's right.

18 (Pause)

19 Q. All right. Let's talk about what you did after you -- I
20 think you told us after this demonstration, you called in the
21 other guys. And did they get to do a demonstration as well?

22 A. Those who were there that day.

23 Q. All right. What was the next step that you took after you
24 saw this demonstration?

25 A. So after talking to the team and caucusing on that, you

1 know, Brendan brought a demo to Facebook, which is where this
2 demo was, but it wasn't the most up-to-date, state-of-the-art
3 experience that they were building, and in order to get that,
4 we had to go down to their headquarters because what they had
5 they couldn't transport yet.

6 And it was pretty clear after seeing this that this
7 is pretty neat, but there were also a bunch of issues with it.
8 So it was worth seeing what the most state-of-the-art thing
9 that they built was.

10 we planned a trip -- I think it was pretty soon --
11 within a week or two, to go down to, I think, Irvine where the
12 headquarters were for Oculus to go see the most recent
13 prototype that they built.

14 Q. Did you go yourself?

15 A. Yes.

16 Q. Who else went with you, if you recall?

17 A. Cory and Amin, and I don't know if anyone else went.

18 Q. Do you recall if you also shared a meal with Mr. Iribe and
19 other folks after the demonstration that day?

20 A. We were in Oculus's headquarters, so there may have been
21 some food around, but we didn't -- it wasn't a long meal, if it
22 was a meal.

23 Q. All right. And can you describe for us the demonstration
24 that you saw down in Irvine?

25 A. Sure. So that was a much higher fidelity, more accurate

1 experience. So what's the best way to describe this?

2 So the demos themselves, I mean, the content, there
3 were a few different things. They had a demo where there was a
4 T. Rex. It was pretty cool. The T. Rex is walking around and
5 it kind of looks at you and roars at you, all right, and you
6 kind of actually tremble a little bit and think -- you know, in
7 your mind, you are like, all right, there is clearly not a
8 T. Rex here, I know that, but it really just -- you know, it
9 feels very real, and the sound is very real.

10 You know, there's a demo where you're standing on the
11 edge of a building, and you can take steps over to the edge,
12 and, again, you know this is -- this is obviously not real, it
13 is just in a computer, but you actually feel -- I don't know --
14 what's that -- vertigo when you step to the side because it
15 feels so real that it's, like, all right -- this is -- this is
16 kind of a different experience than anything you would have
17 with normal TV or anything like that.

18 So there were a few demos like this.

19 But in order to give you this feeling of presence,
20 like you're really there, it has to be a high fidelity
21 experience. It can't be jittery, you know, it can't be slow,
22 it can't be that when you look around stuff lags, all right,
23 because all that stuff breaks the illusion that this is a real
24 virtual reality, right?

25 And all that stuff -- all those errors just kind of

1 help make you snap out of it and go this isn't actually a real
2 experience.

3 So the difference between the first demo that I saw
4 and what I saw down at Oculus headquarters was, it was faster,
5 it made you less motion sick, it felt more real, but it also
6 wasn't perfect yet. So, I mean, that wasn't the exact thing
7 that we ended up shipping.

8 You know, I think it took another couple of years
9 from that point to actually get to a product that we ended up
10 shipping as a consumer product because there was a lot more
11 that needed to work. And, again, that was just, like, the
12 first product that we shipped, right, kind of like the earliest
13 version of a BlackBerry smartphone. It's not, you know, the
14 iPhone version that we want to get towards building.

15 But through all these experiences, I basically came
16 away with the belief that now it was possible to build a good
17 VR experience over the next five years or ten years if we
18 invested a lot in that, whereas, before I had seen these, I
19 wouldn't have known whether it was, like, 50 years away. I
20 mean, it wasn't clear what the -- you know, what technology
21 needed to be built before this could be something that -- that
22 you could then go take into building something that would be an
23 affordable product that people could get and be happy with.

24 Q. Did you and Mr. Zoufonoun talk about proposing a deal to
25 Oculus at some point around the time of this demonstration down

1 in Irvine?

2 A. Yes.

3 Q. All right. Did you --

4 A. Part of what we wanted to do was -- you know, different
5 entrepreneurs and founders think about their companies in
6 different ways. You know, some aren't willing to sell their
7 companies under, you know, any circumstances. I didn't. A lot
8 of companies wanted to buy Facebook early on. And then some
9 are open to it if it's a good deal, and some really want to
10 sell their companies.

11 And then there is --

12 Q. Where would you put Mr. Iribe and the folks at Oculus on
13 that scale back in January?

14 A. They definitely weren't in the "really want to sell our
15 company," which is why I think it took awhile to come to terms
16 and it ended up being so expensive.

17 But they also clearly were not in the "we would never
18 sell." So they were closer to that.

19 This team, which I think you can probably get from
20 their testimony -- I don't actually know which ones have
21 testified yet and which ones will to come -- I mean, they
22 really care about virtual reality. This is going to be, like,
23 their life's work. When you look back 10, 20 years from now, I
24 think that that's going to be the thing that they are most
25 proud of in their lives is they built this experience and

1 contributed to this.

2 So, you know, I think that they were open to
3 considering a deal but only if we could convince them that this
4 was actually going to be really good for VR and not just a good
5 deal for their company.

6 All right. So if it was just going to be money they
7 were going to get but then they were going to have to walk away
8 from their dream of building this, I don't it couldn't have
9 happened. And you can, of course, ask them about this when
10 they -- when they testify.

11 But that -- that, I think, ended up being -- most of
12 what we actually talked about was not the price of the deal but
13 how was Facebook, this social networking company that, frankly,
14 people really did not think about VR before -- before we
15 started talking to these guys, how were we going to help them
16 realize their dream of building virtual reality.

17 And that was the conversation over the next couple of
18 months that eventually led to the deal coming together.

19 Q. Let's take a look at DX489, which is also in your
20 notebook, and start at the back if we could.

21 MS. WILKINSON: First of all, let's go up to the top.
22 I'm sorry. Sorry, Dave. Can we go back? Just to lay the
23 foundation up at the top.

24 BY MS. WILKINSON:

25 Q. Who is this email from?

1 A. Amin.

2 Q. And, again, tell the jury who he is.

3 A. He was the head of corporate development. So he worked on
4 these kind of deals for us.

5 Q. You call him the -- you called him the deal guy? He helps
6 get deals done if you --

7 A. Sure.

8 Q. Okay. What date is this email?

9 A. January 31, 2014.

10 Q. All right. And who's on the cc line?

11 A. Andrea Besmehn.

12 Q. Who is she?

13 A. She is my executive assistant.

14 Q. Great.

15 And it says "Project Inception." What does that
16 mean?

17 A. That was the code word for the project that, I think, Amin
18 and the team has chosen.

19 whenever we are doing projects, the team always comes
20 up with code words. So that way, you know, we're not talking
21 about Oculus. If something leaked, for example, then, you
22 know, people wouldn't know that -- you know, that we were
23 talking about Oculus, the company. It would just be some code
24 word that people wouldn't know what it was.

25 Q. Explain to us why would you care. You are thinking about

1 buying Oculus, right? This is when you are starting to think
2 about putting together a strategy.

3 why would you care if somebody out in the public
4 found out you were trying to buy Oculus or any other company?
5 A. Oh. Because these deals are competitive. Right? We
6 talked a second ago about how when Marc Andreessen wanted to
7 invest, he was up against other competitive investors who
8 wanted to invest. There is a similar dynamic if a company like
9 us is to buy another company.

10 So, you know, I gave some testimony before around why
11 we moved so quickly during the deal, and part of that is
12 because when you're doing -- when you're making deals and it is
13 a competitive situation, you often don't have a lot of time.
14 Right?

15 I mean, some of the bigger acquisitions that we have
16 done, like Instagram and WhatsApp, which were each more than a
17 billion dollars, we had to move very quickly because other
18 companies -- whether it was Google or, you know, Twitter or
19 Apple, or whatever the companies were -- were also trying to
20 talk to those companies and buy them. And, often, if a company
21 knows that we're offering something, they will offer more, so
22 being able to move quickly not only increases our chance of
23 being able to get a deal done if we want to, but it makes it so
24 we don't end up having to pay a lot more because the process
25 drags out. So that's a really important thing. I mean, you

1 want to make -- you want to take the time to evaluate this
2 carefully and meet all the people involved and come to a clear
3 understanding that this is a company and these are people that
4 we want to work with. But you want to do that as quickly as
5 possible so it doesn't get taken from -- out from under you by
6 a competitor.

7 Q. Got it.

8 Now, Mr. Zoufonoun is forwarding you this email.

9 MS. WILKINSON: Can we go to the bottom, please,
10 where the email starts?

11 I think it is the second page, Dave.

12 So start from the bottom. His Honor has noted that
13 maybe if you could change the way emails are read, we would all
14 appreciate it. It's hard for us to start at the bottom and
15 read up.

16 So go down to the bottom, please.

17 THE COURT: I'm going to invent that.

18 MS. WILKINSON: It is hard. Well, you have him here.
19 Maybe he can do something about it.

20 THE COURT: Okay.

21 MS. WILKINSON: Keep going down, please. Keep going.
22 There we go. Thanks, Dave.

23 BY MS. WILKINSON:

24 Q. Right there. This first email, are your folks talking
25 about a strategy of how to get Oculus to do the deal with you?

1 A. So I want to be clear that I'm not on this email.

2 Q. Right. This is forwarded to you at the end, and I
3 think -- doesn't Mr. Zoufonoun tell you at the beginning for
4 you to read it yourself from the bottom of the thread?

5 A. Sure.

6 Q. Look at the front.

7 A. So -- yes. So Amin is involved in both making these deals
8 and then also making sure that they are successful, which is
9 why I pushed back a little bit on the characterization of him
10 just as a deal guy because that makes it sound like he's just
11 trying to get something done, whereas he also is deeply
12 involved in actually making them work once -- once the
13 companies join Facebook.

14 Yeah, I think what he's saying here is basically what
15 I was saying a few minutes ago, that, you know, getting -- if
16 this is going to happen, it is not going to be because we just
17 offer a lot of money, although we're going to have to offer a
18 fair price for the company that is more than -- than what they
19 potentially could -- felt like they could do on their own. But
20 they also would need to feel like this was actually going to
21 help their mission -- right? -- and help virtual reality get
22 built in the world and that if -- if coming to Facebook was
23 going to jeopardize that, then they were weren't going to do
24 that.

25 So, you know, he felt after his interactions with

1 them, which I agreed with even though I wasn't on this thread,
2 that the most important thing was aligning and getting excited
3 about a shared vision about how we were going to work together
4 or if they built the hardware and we built the experiences, how
5 that could be better than either of us working separately.

6 Q. Did you also share the belief that you should instill fear
7 or trepidation in them about staying independent?

8 A. Yeah. That's less my thing, but -- but I think if you are
9 trying to get -- if you are trying to help convince people that
10 they want to join you, helping them understand all the pain
11 that they would have to go through to build it out
12 independently is a valuable tactic. But that's, I think, a
13 little less what I focused on than just what we could just do
14 together.

15 MS. WILKINSON: Let's go back to the top of that
16 document, the first page, please.

17 And does Mr. Zoufonoun share his strategy there, what
18 he thinks is the best strategy in the second paragraph there,
19 "I still think"?

20 MR. SAMMI: Objection, calls for speculation.

21 THE COURT: Let's see. What you're saying is you
22 think his answer calls for speculation?

23 MR. SAMMI: Yes.

24 THE COURT: On the deal?

25 MR. SAMMI: Yes, sir. She's asking the witness what

1 he means. She can ask his understanding, but --

2 MS. WILKINSON: I'll rephrase it, Your Honor. I
3 don't mind.

4 THE COURT: Okay. Good. It saves me from having to
5 make a ruling.

6 BY MS. WILKINSON:

7 Q. Mr. Zuckerberg, what's your understanding of this
8 expression of strategy from Mr. Zoufonoun?

9 A. Well, this looks like, just from reading it now, very
10 similar to the last email that you showed me where he's arguing
11 that the only way that this ends up happening is if the Oculus
12 team is so excited about what we could do together beyond what
13 they could do independently that it would be better for VR. At
14 that point, we could discuss numbers and financials around the
15 deal, but we weren't going to -- you know, the thing that was
16 going to get this done wasn't have it be a -- only have it be a
17 big number. It was really a lot about the alignment of the
18 vision and what we're trying to build together.

19 Q. Okay. We're going to go down to the next email.

20 Can you tell us the name of the person who wrote this
21 email, this part of the email?

22 A. Anantha Kancharla.

23 Q. Okay. And what does he do at Facebook?

24 A. I don't think he's at Facebook now, but he -- at the time
25 he was an engineer there.

1 Q. All right. And do you rely on some of the other people
2 who work for you to assess the technical issues associated with
3 deals including the one technical issues associated with
4 Oculus?

5 A. Yes.

6 Q. All right. Take a look down where it says "their key
7 technical folks."

8 Is he giving you-all an assessment -- what did you
9 understand him to be saying there about who were the key
10 technical folks at Oculus?

11 A. Well, he seems to be listing out who some of the key
12 technical leaders are.

13 Q. Do you know who Nirav is?

14 A. Yes.

15 Q. Did you meet with him before you closed this deal?

16 A. Yes.

17 Q. Do you know who Michael is?

18 A. Yes.

19 Q. Did you meet with him before you closed this deal?

20 A. Yes.

21 Q. And Mr. Carmack, you've already told us about, right?

22 A. Yes.

23 Q. Do you know what he means by "a couple of vision Ph.D.'s
24 worth preserving"?

25 A. Yes.

1 Q. What does he mean? What did you understand him to mean?

2 A. Ph.D. -- right? -- so people who had gotten an advanced
3 degree in computer vision, right? So that's --

4 Q. What is computer -- it's obvious to you, but again, to us,
5 what is Ph.D. in computer vision --

6 A. It's --

7 Q. -- or what is computer vision?

8 A. It's software that helps a computer see things. It's --

9 Q. Oh, that's obvious.

10 A. I'm sorry. For example, like face recognition, right?
11 It's -- you know, when you upload a photo to Facebook and we
12 can suggest whether it's a friend of yours in it, because we
13 understand that it's their friend by looking at it, that's an
14 example of computer vision.

15 In the case of this, computer vision is really
16 important, because you have this headset on and you're looking
17 around the room, and one of the key things that you're doing is
18 you have to track what the person's head position is. And one
19 of the ways that you can do that accurately is by having a
20 camera in front of the person that then looks at them and tries
21 to determine when they're moving around in space, right?

22 That's much more accurate than just having a
23 gyroscope or something on the device itself, so that is a
24 computer vision problem. And we needed the best computer
25 vision Ph.D.'s and experts in the world to build this

1 technology.

2 Q. All right. Go down to -- two bullets down where it says
3 "The hardest" -- you've just described tracking. It says, "The
4 hardest nontracking work they're doing is what Carmack is doing
5 with the Android."

6 what do you understand that to mean? what is
7 nontracking work?

8 A. So tracking -- sorry. Tracking is what I was just
9 referring to, so basically knowing as you move your head around
10 and as you walk through space, what your position is, because,
11 you know, what the world is that you see is, of course, going
12 to be dependent on what your position is, right? So if I'm
13 looking this way, I'm going to see this. If I looking this
14 way, I'm going to see this and all the variants in between.

15 The rest of the work is -- you could call it systems
16 work. So it's -- so imagine this technical problem, right? So
17 you turn your head 10 degrees, right? And now you're looking
18 at a different place. And your eyes get a new image --
19 right? -- like, in the real world, within 5 or 10 milliseconds,
20 right? So really quickly.

21 So that means that in order for virtual reality to
22 work, we need to build software that can know that you moved,
23 know what the image should be, and then send it to the screen
24 within 5 or 10 milliseconds or else you're going to get motion
25 sick -- right? -- and it's not going to be a good experience.

1 So that just requires a lot of optimization and
2 making that go quickly, and that, if you follow Carmack's work,
3 is one of the things that he is a world expert at, among other
4 things.

5 Q. And --

6 A. So that was one of the hardest problems here, is not just
7 doing the tracking of knowing where the person is in space, but
8 also being able to then go render that image really quickly for
9 the person.

10 Q. It says, "Carmack is doing Android." We've heard
11 testimony that Mr. Carmack worked on mobile when he came to
12 Oculus.

13 was that what you understood when you spoke to him?

14 A. Yes.

15 Q. And is doing work on mobile different than doing work on
16 the computer Rift headsets that we've seen introduced in this
17 case?

18 A. Yeah. We --

19 Q. Why?

20 A. -- talked about this a bit earlier.

21 You know, for example, when we're building a Facebook
22 app, we have to build a different thing, whether we're building
23 an iPhone app versus our website, for example. I mean, they're
24 different experiences to some degree, so they're a different
25 code.

1 And similarly, if you're building -- so we've got a
2 mobile version of VR, which is good because you can take it
3 with you anywhere that you go. You basically -- you have your
4 phone. You can snap it in. It doesn't -- you don't have to
5 have a wire to a big computer. There's all these advantages of
6 that, but a phone is generally not as strong of a computer as
7 like the big thing that you might have at your desk.

8 So Carmack had to do specific optimization for that.

9 We also have a version which is tied to -- you know,
10 you have a wire from your headset to a really powerful computer
11 that you'd have at your desk and that allows for a higher
12 quality experience because those -- because that computer is
13 bigger and more powerful and you can do more with it. But
14 they're basically completely different platforms, and just like
15 when we at Facebook make our website differently from our
16 iPhone app, you know, the mobile version of VR is a pretty
17 different thing from the computer version of VR.

18 Q. So the code Mr. Carmack would write for mobile would not
19 be code that would work on the -- on the computer Rift headset?

20 A. Most of it, no. And some of it you might be able to
21 adapt, but there would be work.

22 Q. Okay. And that's what you call optimization or is it
23 broader than that?

24 A. I was referring to something different, but yeah, it would
25 be a lot of work to take the code from mobile and make it work

1 on a computer.

2 Q. All right.

3 Did there come a point in time when you were talking
4 to Oculus that you spoke to Mr. Iribe about potential deal
5 terms?

6 A. Yes.

7 Q. And do you recall when that was, the first time you
8 discussed -- started discussing that with him?

9 A. Well, we started early because I wanted to get a sense of
10 whether he was even open to selling and at what price, and so I
11 started -- so you want to ask a bunch of questions around what
12 their other options are in the market. So if they were trying
13 to raise more money, because you're trying to manufacture
14 stuff, they were going to need to build all these facilities
15 and do this and get a lot more investment than just what
16 Andreessen had put in.

17 So I started asking them, "well, what price do you
18 think you'll raise money at," right? So just to get a sense of
19 is the valuation here reasonable, how would they think about
20 this, and I think that that happened the first time that I went
21 down there. But that was more -- it was less us making an
22 offer and more me just trying to understand how they thought
23 about the market around that.

24 I also had a number of conversations with other
25 companies and other investors, including Marc Andreessen, about

1 the market and other investors in VR and, you know, when they
2 were bid ding to invest, who else was bidding to invest and at
3 what prices, to try to get a sense of what the price that we'd
4 need to offer would be to eventually make a deal work.

5 Q. Do you remember the value that Mr. Iribe first put out for
6 a possible purchase of Oculus?

7 A. There were a few, but, I mean, I remember 4 billion was
8 what they felt like they were going to -- was -- you know,
9 typically, if you're looking to raise investment for your
10 company, you know, they felt at the time that investors would
11 invest at valuing the company at around \$2 billion, which I
12 checked out with Andreessen and a few other people and
13 ultimately came to the conclusion that that was a reasonable
14 ballpark for where people might invest.

15 You know, I got some early signals, which I think
16 were in some of the texts earlier that suggested that that
17 might be too high. After doing some more checks, I think I
18 came to the conclusion that that was actually a reasonable
19 price.

20 Now, when you're thinking about buying a company, it
21 is typical to -- typically, if you're buying a company, to get
22 control of the company, you end up having to pay a premium over
23 what you would just invest to buy a small piece of the company
24 but have the other team stay in control. So that premium is --
25 you know, can be as much as 2x, which I think, is where Brendan

1 had gotten to this figure of 4 billion. 2 billion was what
2 people would invest in and then to have control of the company,
3 a premium of 4 billion, which I think reflected that they
4 really weren't looking to sell the company. I mean, they just
5 wanted to build this thing and stay independent, so they were
6 only going to sell if we made a financial offer that was really
7 good.

8 Q. All right. Let's take a look at DX1531.

9 As we're getting that up and as you can find it, you
10 don't recall the exact date when you started talking to
11 Mr. Iribe about possible financial terms, do you?

12 A. Not a Facebook offer, but I do think that I started asking
13 some questions about the financials around the company that
14 first time that I went down to visit the Oculus headquarters
15 and get that demo.

16 Q. So that would have been in January of 2014?

17 A. I think that's right.

18 Q. All right. Okay. Take a look at this email, if you
19 could, and start back on the -- where it starts with your email
20 on Saturday, February 1, 2014.

21 A. I'm sorry. Where are we?

22 Q. The second page, the middle of the page where -- is that
23 your email?

24 A. Over on the next -- sorry. What document are you on?

25 Q. Document DX1531.

1 A. Okay. Okay.

2 Q. The second page, is that your email address that you're
3 writing to Mr. Iribe on February 1st, 2014?

4 A. Yes.

5 Q. All right. And before we go into this, can you just take
6 a look at it, and does this suggest to you whether you had had
7 conversations with Mr. Iribe about potential financial terms
8 before Saturday, February 1 or after? Or the valuation?

9 A. Yeah, we had a few conversations, like I said. I mean,
10 this suggests that, potentially, Brendan's price for -- at
11 which he would do the deal increased, which I do remember, I
12 think, happened at some point. I don't remember what -- at the
13 beginning of the negotiation where he was, but I do remember
14 towards the end they were trying to get to 4 billion.

15 Q. All right. And in this -- we're not going to go through
16 the whole email, but if we could go to the next page at the
17 very bottom, the last paragraph that says "strategically."

18 Let me read this to you.

19 You say to him, "Strategically, it seems like you
20 have a three-year head start on the rest of the industry, and
21 this is your opportunity to cement Oculus as the standard VR
22 system people will use for decades."

23 what did you mean by that at the time? And then we
24 can talk about whether you still agree with it.

25 A. So they were ahead in technology. They built this headset

1 that was better than what others had, and we had looked at the
2 other headsets that were on the market and were coming on the
3 market at the time, including one from Sony that they -- it
4 wasn't a consumer product yet, but they had a developer kit
5 like Oculus. And the Oculus one, we thought, was clearly
6 better.

7 So we thought that they had a good head start, but
8 you know, when -- I think what can frequently happen is that a
9 lead -- if you have a hardware advantage, other companies can
10 catch up to that, right? So if you look at phones, for
11 example, you know, when the iPhone first came out, there was
12 nothing else like it. And now, you know, I think a lot of
13 people would argue that there are other phones that have just
14 as many features and are just as good as the iPhone in
15 different ways.

16 So for a lot of people the reason why they like
17 either the iPhone or Samsung phones at this point, or whatever
18 it is that they use, is not just because the phone is better,
19 but because there is a whole developer community and different
20 apps around those different devices.

21 So that's, I think, what we needed to do, was just
22 take -- you know, just like how Apple originally, I think, had
23 a key, had a big advantage where the iPhone was clearly better
24 than everything before it, Apple then went and built the app
25 store in the community that I think solidified a lead that they

1 had. And that's what I think the Oculus team had to go do, was
2 turn the hardware advantage that they had at the beginning into
3 a sustainable app ecosystem.

4 Q. I understood what you said. But after that, explaining
5 this, "within three to five years, some of the technical
6 challenge you've solved will become easier to solve because
7 hardware will improve."

8 Is that what you were just saying to us -- explaining
9 to us?

10 A. Yes.

11 Q. "So others will be able to replicate them. If you have
12 any success, then other companies will definitely enter the
13 space.

14 "If you haven't solidified your ecosystem with the
15 most important killer apps yet, then you will likely be
16 fighting a war against Microsoft, Google, or someone else where
17 you are outresourced."

18 Is that consistent with the explanation that you just
19 gave the jury?

20 A. Yes.

21 Q. Now, when you say "killer apps," what do you mean by that?

22 A. It's an industry term.

23 So the basic idea is that for every computing
24 platform, like the iPhone, for example, or a computer with
25 windows on it, you know, people don't want to have an iPhone to

1 have an iPhone. They want to have it because there's a few
2 things that they do on it that are critical to them.

3 So for phones, text messaging was a really important
4 one or being able to use a web browser or to look things up or
5 an app store at this point to get access to a lot of different
6 apps.

7 So the question is, you know, what are the -- what
8 are the killer apps for VR going to be? What are going to be
9 the things that people buy a VR system in order to get access
10 to those?

11 And the most important platforms and businesses that
12 I think have gotten built over the last few decades are ones
13 where those come together, where one company builds both the
14 platform and the killer app, and I think our argument was
15 social communication, and a lot what Facebook does is, I think,
16 one of the killer apps of all computing. Right?

17 It is certainly one of the big things that people do
18 on phones, and I think it is going to be one of the big things
19 that people do in VR too.

20 So we were on track to building that. They were on
21 track to try to build this platform but had no killer apps. If
22 we came together, then -- just like Microsoft had done with
23 Office during the '90s where they both -- they were both --
24 there was Windows in the computer and there was Microsoft
25 Office, the productivity suite that people really wanted to

1 use, and, you know, different communication products on phones,
2 we felt like we could build that experience for VR, and that
3 would be the most valuable thing that we could do together.

4 Q. After explaining this to Mr. Iribe, did you offer to
5 continue your discussions with him?

6 Look down to the bottom.

7 MS. WILKINSON: If we could go down to the last
8 paragraph, please, Dave.

9 Take a look at "if you're still open."

10 A. Yes.

11 Q. Did Mr. Iribe, in fact, take you up on your offer?

12 A. I think later.

13 Q. All right. Did there come -- was there some other deal or
14 something else going on during this time while you were
15 beginning your discussions with Oculus that took you away from
16 the negotiating table?

17 A. Well, we were building a lot of things at the time, but we
18 also -- between this, which I think was in late January, early
19 February and, I think, mid-to-late March when we actually
20 agreed to the Oculus transaction, we did also buy this company
21 WhatsApp, which was a much larger transaction than this. It
22 was \$19 billion.

23 Q. 19 billion?

24 A. Yeah. It was a big -- it's expensive. I mean, there are
25 more than a billion people around the world who use WhatsApp

1 now. Almost a billion people use it every day.

2 So it is a big thing, and it fits right with
3 Facebook's core ethos. It is a communication product for
4 texting and communicating with groups and, similarly, I mean, I
5 knew that they would just be much better and be able to build
6 better services as part of Facebook, and their founder agreed.

7 But we had a whole kind of parallel process to this
8 where I was talking to -- to their founder about that. And as
9 you can imagine, this takes a bunch of focus to do -- so -- you
10 know, doing multiple multibillion dollar deals at the same time
11 is hard.

12 Q. Did this WhatsApp deal move at a pretty rapid clip like
13 your negotiations with Oculus?

14 A. Yes. But I want to add some -- I want to make sure that
15 the testimony on this is complete. So I think that this is
16 being characterized as if we suddenly just decided one day, we
17 woke up and decided we were going to do this and then looked at
18 some documents over a few days and then did the deal.

19 In reality what is happening in all of these, in
20 Instagram and WhatsApp and Oculus, they are kind of things that
21 we've been thinking about for a long time -- right? -- and I've
22 been building relationships, at least in Instagram and the
23 WhatsApp cases, for years with the founders and the people that
24 are involved in these companies, which made it so that when it
25 became time or when we thought it was the right time to move,

1 we felt like we had good amount of context and had good
2 relationships so we could then move quickly, which was
3 competitively important and why we've been able to -- why a lot
4 of these acquisitions, I think, came to us instead of our
5 competitors and ended up being very good acquisitions over time
6 that a lot of competitors wished that they had gotten instead.

7 So I want to make sure we're clear on this. It's not
8 like I just woke up one day and decided that we were going to
9 do this and then a week later we did it. I mean, that's not
10 how billion dollar projects come together. I mean, these were
11 all things that I think we've been thinking about for a while.
12 But when it came time to actually pull the trigger and say,
13 okay, we've been talking about and thinking about this for a
14 while, but now let's move forward and try to do this, we put
15 all the pieces in place so we could move pretty quickly.

16 Q. All right. Do you -- I asked you about a dinner in --
17 with Mr. Iribe sometime in late January.

18 Take a look at DX1532 and just see if this refreshes
19 your recollection about when that dinner occurred.

20 MS. WILKINSON: Can you take it down until -- thanks.
21 Just so he can look at it. Thanks, Dave.

22 THE COURT: It isn't already in evidence?

23 MS. WILKINSON: 1532 -- 1532, no.

24 THE COURT: It's not on the list either?

25 MS. WILKINSON: No. It's -- well, I don't know

1 what --

2 (Pause)

3 THE COURT: Wait a minute. Let me see if it's on the
4 list.

5 1342?

6 MS. WILKINSON: 1532, Your Honor.

7 THE COURT: Oh, excuse me.

8 (Pause)

9 MS. WILKINSON: No objection?

10 MR. SAMMI: No objection.

11 MS. WILKINSON: He doesn't object, Your Honor.

12 THE COURT: It's not on the list. You're right.
13 You're offering it into evidence?

14 MS. WILKINSON: Yes, and Mr. Sammi doesn't object.

15 THE COURT: That document is admitted into evidence.
16 (Defendants' Exhibit No. 1532 received)

17 BY MS. WILKINSON:

18 Q. Now we can do it. Now we're going to start in the middle
19 just to make it confusing because --

20 Is this the email --

21 MS. WILKINSON: Go to the middle, please.

22 -- from Mr. Iribe --

23 No. Yeah, right there. There we go.

24 -- to you forwarding something from Mr. Carmack?

25 A. Yes, it looks like it.

1 Q. What's the date of the email?

2 A. January 31.

3 Q. And what does he say in the first sentence?

4 A. "Thanks for an amazing dinner."

5 Q. And the next one? Sorry.

6 A. "Really enjoyed the discussion and the endless duck."

7 Q. What is "endless duck"?

8 A. I don't know. That must have been what we ate that night.

9 Q. All right. So does that refresh your recollection that
10 you had a dinner around the end of January with Mr. Iribe?

11 A. Sure.

12 Q. And he forwarded you this email from Mr. Carmack, right?

13 A. Yes.

14 MS. WILKINSON: If you could show that just for a
15 minute, please.

16 BY MS. WILKINSON:

17 Q. And then let's go back up, if we could, to your response.

18 And who are you writing to on Sunday, February 1st,
19 2014?

20 A. It looks like Brendan and cc'ing Amin and Nate, who is
21 Brendan's co-founder at Oculus.

22 Q. Okay. And what do you tell him?

23 A. Do you want me to read this?

24 Q. You can or you can just describe your purpose of this.
25 I'm going to ask you to explain the second paragraph, but --

1 A. Sure.

2 well, we're summarizing what we talked about at
3 dinner, which is basically the vision of why it made sense for
4 Oculus and Facebook to work together on building this future
5 platform instead of us trying to build it from scratch or them
6 continuing as a separate company.

7 Q. And I think you've explained a bit of this to us just a
8 few minutes ago, but the second sentence or second paragraph,
9 when you say, "The OS Plus killer app strategy has much more
10 potential than what either of us can do on your own."

11 what did you mean by that?

12 A. Sure. This is what we were talking about a few minutes
13 ago, that if you look at the major computing platforms over the
14 last few decades, right? So computers with, you know, windows
15 on them and Microsoft Office, they were very important for
16 productivity in -- in the work space, mobile phones with
17 different communication apps and the ability to access the
18 internet on them.

19 what you want in defining a new category for
20 computing is to both be able to build the platform, which in
21 this case is the headset and all the experience around that,
22 and then also have not just a big ecosystem of content, but you
23 need to have, like, the key things that half of the people are
24 going to want to use, right?

25 And if you don't have that key thing, then, you know,

1 people aren't going to want to go buy a headset if there is not
2 a key thing that they want to go use with that.

3 In order for VR to really work, we need both the OS,
4 operating system or the platform that I'm referring to, and the
5 killer app, which is the key experience that a lot of people
6 really want.

7 Q. All right. Just one other thing in there. In the next
8 paragraph you talk about accelerating growth, and you say, "we
9 can add more great engineers to your team and lower your
10 prices. If you can get to 10 million units a couple of years
11 sooner, we can get every developer and studio in the world
12 building just for Oculus before any big competitor even
13 exists."

14 why is the lowering the price important in terms of
15 building up the developer community and getting ahead of the
16 competition?

17 A. Well, people are more likely to buy something if it's more
18 affordable, right? So if the device is, you know, \$400.00
19 instead of \$1,000.00, that is going to make it affordable for
20 more people and the more people that can afford it are going to
21 decide it is a good deal and want to buy it.

22 The reason why Facebook can help Oculus do this is
23 that we already have a big business from Facebook, so we don't
24 need to make money on this for a long time. So, whereas, if
25 Oculus were a separate company and they can build this for

1 \$400.00, they would need to sell it for 500.00 or \$600.00 in
2 order to make a profit to pay for all their people and sustain
3 the company, whereas, at Facebook, we don't have to do that.
4 Right?

5 I mean, we can make enough money from our -- from
6 Facebook that we can just fund this for ten years or a long
7 period of time, however long it would take to develop this new
8 thing, and make it more affordable for people in the world to
9 get access to virtual reality.

10 So that's just a thing that on day one, you know,
11 them joining us makes this better for people who would consider
12 buying virtual reality.

13 Q. All right. Let's move on to March, if we could, of 2014.

14 I believe counsel asked you about Mr. Andreessen and
15 his investment that he made between November and January into
16 Oculus.

17 Because he was on your board, were you trying to
18 overpay for Oculus to help out Mr. Andreessen?

19 A. No.

20 Q. Okay. Did you have different concerns about
21 Mr. Andreessen and whether he would be happy about Facebook
22 buying Oculus?

23 A. Yes. I was worried that he was going to try to convince
24 the Oculus team not to sell.

25 Q. Okay. That's a little hard for us to understand. So

1 explain. He's invested -- how much did you tell us? --
2 73 million?

3 A. Yes. This is counterintuitive.

4 Q. So he puts money into this company.

5 A. Yeah.

6 Q. You're about to offer them \$2 billion, and you're afraid
7 that Mr. Andreessen is going to be mad?

8 MR. SAMMI: Objection, leading the witness.

9 THE COURT: I'm going to let her do it on that little
10 part because it is complicated.

11 MR. SAMMI: Thanks, Judge.

12 THE COURT: I should sustain you, but I'm going to
13 overrule you.

14 MR. SAMMI: Thank you. I will take that.

15 THE COURT: You should have won, but you didn't.

16 BY MS. WILKINSON:

17 Q. So we just want you to explain. We don't understand that,
18 so explain that to us.

19 A. Sure. The venture capital business model -- you know, I
20 think most people, you would be happy if you invest a dollar
21 and you make \$2.00 back. I mean, that's good. And, you know,
22 he's not -- he wasn't sad about the outcome.

23 But what venture capitalists are really focused on
24 is, they invest in 20 companies, and the expectation is that,
25 you know, maybe 15 of them won't go anywhere, and they might

1 lose money on those, and they might go bankrupt.

2 And what they try to do is have one really good
3 company, right? So one, you know, Google or Apple or, you
4 know, whatever -- whatever you think of as a great technology
5 company, and if you can do that, then that more than makes up
6 for all the other ones that fail.

7 So when I talked to Andreessen earlier, he told me
8 that he was more optimistic about Oculus being Andreessen
9 Horowitz's breakout investment than any of the other 20 that
10 they had done.

11 That didn't necessarily mean that it was necessarily
12 going to work, but it meant that of the ones that he thought
13 had a chance of being the next huge company that this had a
14 good shot, which -- you know, that was before we were really --
15 that was pretty early on and all this, and that just made me
16 think that, rather than being happy that we were going to buy
17 them and that he would make some money in the short term, what
18 was actually more likely was he would be kind of be a little
19 bit disappointed that it didn't get to play out and see if it
20 could become a massive, massive company on the scale of the
21 biggest technology companies in the world.

22 And from his perspective, he is more than willing to
23 take that risk, and he would almost rather take that risk and
24 hope it becomes huge and have it blow up along the way and end
25 up not being anything than selling before that.

1 Q. why? what happens if it does become the biggest
2 technology company in the long term?

3 A. Then that's how they do the best at their firm.

4 Q. They make more money that way?

5 A. Yeah. And it's -- and their reputation and the change
6 that they feel like they contributed to in the world is bigger.

7 Q. Did you raise these concerns with your team at Facebook?

8 A. Yeah, I think so.

9 Q. All right. Take a look at what's Plaintiffs' Exhibit 146,
10 but you have it in your book as Defense Exhibit 1440, and it is
11 going to be at 25892.

12 MS. WILKINSON: Your Honor, this is a long exhibit.
13 Mr. Sammi and I agreed we're only putting in the ones that were
14 actually -- we're only agreeing to the ones we've discussed.

15 THE COURT: This one is real little bitty that we
16 couldn't read.

17 MR. SAMMI: Yes.

18 THE COURT: Unless you blow it up.

19 MS. WILKINSON: Yes.

20 THE COURT: He highlighted them in yellow? Is that
21 the same document?

22 MR. SAMMI: Yes.

23 MS. WILKINSON: Yeah, so there's the message. And
24 then, if we could, just put it on slide Number 9, David,
25 because then the jury -- well, there we go. That's fine.

1 BY MS. WILKINSON:

2 Q. Okay. Mr. Zuckerberg --

3 THE COURT: You've got the number so you can find it?

4 MR. SAMMI: Yes, Your Honor.

5 THE COURT: Thank you.

6 MR. SAMMI: Thank you.

7 BY MS. WILKINSON:

8 Q. That's the number over there on the left -- right? --

9 Mr. Zuckerberg, of your text, 25892?

10 Do you see that on the screen, the number on the
11 left?

12 A. Yes.

13 Q. And then that says, "Mark Zuckerberg at whatsapp."

14 Is that the company you were just telling us that you
15 purchased?

16 A. Yes.

17 Q. All right. And tell us what -- this is -- I don't think
18 it shows there, but this was to Mr. Zoufonoun. Read to us what
19 you told him, please.

20 A. "I think we just need to keep them excited. Otherwise, I
21 worry that even if we meet their price demand, they may decide
22 not to do it or Andreessen might convince them not to at the
23 last minute, and that would set up a terrible dynamic where
24 we've caved on price once, and they'll think we'll do it again
25 in the future."

1 Q. Who are you talking about? Who's the "they"?

2 A. The Oculus team.

3 Q. And "keep them excited," what do you mean by that?

4 A. It's -- this gets -- again, I don't remember this exactly,
5 but I think it's referring to this dynamic around talking about
6 the shared vision for what we would build together, right?

7 Because without -- those were the pillars that we agreed to
8 when we decided to come together as companies, was this shared
9 perspective on what we wanted to build in the world and what
10 everyone perceived was a fair -- a fair, quite expensive, price
11 for the company.

12 Q. All right. Were you also concerned about whether other
13 companies might come in and try and purchase Oculus out from
14 underneath you?

15 A. Yes.

16 Q. Did you share those concerns with your team?

17 A. Yes.

18 MS. WILKINSON: All right. Let's go to the same
19 exhibit but to 2600. And if you could blow up that up for us,
20 Dave, I would appreciate it.

21 (Pause)

22 BY MS. WILKINSON:

23 Q. All right. What are you reporting up there in the first
24 message?

25 A. Do you want me to read it?

1 Q. Yes, please.

2 A. "He said someone from Google recently expressed interest."

3 Q. And what did you say next?

4 A. "He prefers to work with us, but his board might make him
5 check with Google and Microsoft first."

6 Q. Who is he?

7 A. I assume it's talking about Brendan.

8 Q. All right. And what did this tell you about whether you
9 needed -- or what did this tell you about the status of your
10 deal and what you wanted to do?

11 A. Well, Google is a big competitor for us when we're
12 thinking about doing these kinds of deals, so, for example, --
13 and there are other companies as well -- right? -- Microsoft
14 and others. You know, we've talked a little bit about
15 WhatsApp, which was another deal that we did around this time
16 horizon.

17 And just to give you a flavor for this, you know,
18 that kind of happened on a similar timeframe. I had been
19 talking to Jan, the founder of WhatsApp for, in their case,
20 years -- right? -- in terms of getting to know each other, and
21 then we decided we wanted to do it and actually worked out the
22 deal terms over a couple-week period, I think.

23 And during that period, even though that deal was
24 much bigger, \$19 billion, during the two weeks that we were
25 negotiating, another company actually came in and said that

1 they were willing to offer more money to buy that company. And
2 the reason in that case why I think he -- he -- he went with us
3 is because, again, this belief in the shared vision of what we
4 could do together and the relationship that we'd built over a
5 few years of getting to know each other and what the companies
6 and our values were all about.

7 So -- but it's the kind of thing -- it's really --
8 there's a lot of anxiety in these deals, right? I mean, this
9 is something -- you know, if you're going to pay \$19 billion
10 for a company or \$2 billion for a company, you clearly have to
11 really believe in it. I mean, those are very large amounts of
12 money.

13 And the idea that one of your competitors might --
14 that there's this thing that you think is awesome that would --
15 that you want to be a part of building and that you think would
16 really help our business and our community, but that then a
17 competitor might get that, I mean, and that's doubly bad.
18 Then, not only do we not have it, but a competitor who would be
19 using it to compete against us has it.

20 So there's this general push where you want to -- you
21 want to move as quickly as is reasonable to move, and that
22 doesn't -- I mean, of course, we're not going to want to make a
23 deal if we don't have all the knowledge that we think we need
24 to have, but we also don't want to dilly-dally, right? And if
25 we -- you know, I think some companies might just take many

1 weeks or months to review some of the stuff, and I think one of
2 the things we've always prided ourselves on and one of the
3 things that has always worked well about Facebook is that we've
4 just been able to be flexible and move quickly on important
5 things. And that's served us very well.

6 Q. Did there come a time when you decided to go forward with
7 the deal or were close and briefed your board about the terms
8 of the deal?

9 A. I think multiple times.

10 Q. Okay. And did you tell them what you thought the cost of
11 the deal would be?

12 A. Yes, of course.

13 Q. All right. I believe you've already told Mr. Sammi
14 \$2 billion to purchase the company itself; is that right?

15 A. Yes.

16 Q. And then you said \$700 million for paying the people.

17 Can you just explain to the jury what you mean by
18 that?

19 A. Sure. So you can think about -- there's the company
20 itself, which has the technology that they've built and all the
21 assets of the company, and then there are the key people who
22 are doing the work. And in our assessment here, a huge amount
23 of what -- of what the value of Oculus was going to be wasn't
24 in what they already built but what they were going to do going
25 forward.

1 So we wanted to make sure that out of what we were
2 paying as much as possible went towards the people who were
3 actually going to be going and building stuff over the next
4 five or ten years -- right? -- not -- you know, not some people
5 who might have built something, you know, at the beginning of
6 the company or, you know, folks like Andreessen who invested
7 and helped them but weren't actually going to be involved in
8 building the company going forward because the belief is that,
9 you know, most of the value and most of what needed to get done
10 was still ahead.

11 So we structured this deal similar to how we
12 structure a lot of other ones where a large percent of what we
13 were paying didn't actually go to the company itself but went
14 to the key people over a long period of time to incentivize
15 them to keep working on this over a long period of time to keep
16 on building out what we knew needed to get built.

17 Q. So the day you close on the deal, did you write a
18 \$2.7 billion check or a \$2 billion and \$700,000.00 check?

19 THE COURT: \$700 million.

20 MS. WILKINSON: 780. Thank you.

21 THE WITNESS: No. All the key folks who were
22 involved have -- their consideration is what we call vesting,
23 right. They will earn it over a five-year period, and then we
24 also had some part of the deal that was tied to achieving
25 specific milestones. So once they sold a certain number of

1 headsets and, you know, reached a certain amount of activity of
2 people using them, then they unlocked part of the deal with
3 Facebook as well.

4 I'm sorry. Is that me?

5 MS. WILKINSON: You may be moving around just a
6 little bit.

7 THE COURT: Is it touching your cheek?

8 THE WITNESS: Maybe. I'll -- I'll bend it.

9 BY MS. WILKINSON:

10 Q. Did you also -- sorry.

11 Did you also talk to the board about a future
12 investment you would have to make in Oculus if you decided to
13 go through with the deal?

14 A. Yes.

15 Q. What did you tell them?

16 A. So we told them that we expected that on top of what we
17 would be committing to pay up front, we should also expect to
18 have to invest at least \$3 billion more in building up the team
19 further, investing in the developer community, and all of the
20 other content that was around that, which is not a dissimilar
21 amount to what I think, you know, Microsoft paid when they were
22 building -- or invested when they were building Xbox, for
23 example, when you build the initial platform, and then you
24 continue paying to employ a lot of people to continue working
25 on the platform and to build out the developer community around

1 that.

2 So it's a lot of money, but there are comps --
3 comparables that other companies have built when they're
4 building other computing platforms that suggest that that would
5 be a reasonable amount, so we discussed that with the board.

6 Q. Did your prediction come true, that you had to invest
7 billions of dollars in the company in addition to what --

8 A. Yes.

9 Q. -- you paid?

10 A. Yes. But I think, as with a lot of things, these things
11 end up being more complex than you think upfront. If anything,
12 we probably have to invest even more money to realize the goal
13 that we had than we had originally thought.

14 So, you know, if we bought the company for \$2 billion
15 and had these, you know, packages that we -- that we offered to
16 key employees that the sum came out close to \$3 billion upfront
17 and we were planning on investing another \$3 billion, now I
18 think we'll actually have to invest somewhat more than
19 \$3 billion over the next ten years in order to reach this goal
20 of, you know, hundreds of millions of people having a good VR
21 experience.

22 Q. In addition to getting the technology, I think you
23 mentioned you were excited about the people that you were
24 getting when you purchased the company, right?

25 A. Yeah. I mean, that's a key part of it.

1 Since most of the work was ahead, it wasn't something
2 that we could just buy and have it be done, right? I mean,
3 most of the work actually hadn't happened yet. Having the best
4 team was actually probably the most important part of the deal.

5 And, you know, again, because Facebook is a social
6 networking company, we didn't have a lot of people before who
7 worked on VR, so we needed to build up that base of talent who
8 could build that from scratch. And that could take a long
9 time, and, again, you know, moving quickly, you know, those few
10 years of head start and advantage was pretty important, so
11 having this team, which is clearly the best team in the field,
12 working on this as the seed just gave us a big advantage there.

13 And then, you know, of course, it's one of these
14 examples where really great people attract more great people
15 who want to work with them, so, you know, I think the day or
16 the week after we announced that we were going to do this,
17 another really key person in the field of VR decided to join
18 them because it was like oh, wow, now Facebook and Oculus are
19 coming together. This is going to be clearly the best place to
20 go work on VR, so I want to join you.

21 So that's a lot of what we were trying to do, just
22 build the dream team of people to work on virtual reality,
23 knowing that it was going to be a five- to ten-year investment
24 and that those people, after the acquisition, were going to be
25 the people actually building out virtual reality.

1 Q. So we heard you say that you, of course, met with
2 Mr. Carmack over the few months you negotiated.

3 And you met with Mr. Luckey?

4 A. Yes.

5 Q. And you met with Mr. Iribe?

6 A. Yes.

7 Q. Did you also meet with Mr. Patel, Nirav Patel?

8 A. Yes.

9 Q. And the man you just mentioned, did you -- were you
10 talking about Michael Abrash?

11 A. Yes.

12 Q. And were there other technical -- it was suggested there
13 was only one technical person you were interested in; is that
14 correct?

15 A. I'm sorry. You asked me --

16 Q. You suggested --

17 A. I talked about Abrash. I didn't talk to Abrash --

18 Q. Right.

19 A. -- until after --

20 Q. Was that the person you were mentioning?

21 A. That was the person that I was mentioning.

22 Q. But it was suggested by counsel that somehow you were only
23 really interested in getting Mr. Carmack; is that true? He was
24 the only key person?

25 A. Is it true that he was the key person or --

1 Q. The only key person.

2 A. I certainly think they were trying to suggest that. I
3 don't think that's true.

4 Q. Okay. All right. Thank you.

5 Do you know someone named Mr. Atman?

6 A. Yes.

7 Q. And did he -- was he part of the Oculus team?

8 A. Yes. He's the chief architect of the computer kind of
9 desktop product that we talked about a few minutes ago.

10 Q. And what about Mr. Romaine, a Google guy?

11 A. Yeah. I don't know that he ever joined.

12 Q. Okay. Did you and others talk about who the key
13 technology people were, the key team at Oculus was?

14 A. Yes.

15 Q. All right. And when you talked to the board and you told
16 them about the deal, did it include describing who the team was
17 and why assembling a team, as you call it the dream team, was
18 an important part of this deal?

19 A. I don't remember specifically, but I'm sure we did,
20 because, I mean, that's such an important part of this, in any
21 deal. Not just in this case, but, I mean, you're -- you invest
22 in people.

23 Q. In addition, did you talk to the board about due
24 diligence, what you were doing and what you were going to have
25 people continue to do to make sure that this was a good deal

1 for you?

2 A. Yes, a lot.

3 Q. Okay.

4 A. And -- you know, this is another thing where I think it's
5 important to give -- to complete the testimony, because I think
6 there was a timeline that we showed earlier for legal
7 diligence. And what we -- what that means is just going
8 through the, you know, technical and legal documents of the
9 company to understand everything that's there.

10 I think the most important diligence or things to
11 understand when you're looking at a company are, are the
12 products good -- right? -- is the technology good, what are
13 competitors doing, are they -- is this company ahead of
14 competitors, are the people good, are they talented, are they
15 good people, are they the kind of people that you want to work
16 with, right. So you will be working with them for years, so,
17 you know, they better be people that you like working with and
18 that you feel like share your values.

19 That, I think, is the most important diligence. And
20 in this case, you know, it was done over months. In some of
21 the cases of the other deals that we've done over years, even
22 though the actual deal itself came together pretty quickly at
23 the end, technically.

24 Q. All right. Let's take a look at -- first of all, do you
25 or people who work for you put together board materials, you

1 know, so you can show the board members a summary of what
2 you're telling them about deals --

3 A. Yes.

4 Q. -- and other matters you bring before the board?

5 A. Yes.

6 Q. All right. Let's take a look at DX544 at 352, please.

7 All right. Is this part of a board presentation on
8 the Oculus deal?

9 A. I think so. Sorry. What was the number?

10 Q. It is --

11 A. 425?

12 Q. 544.

13 A. 544, okay. Got it.

14 Q. At 352.

15 A. Yeah.

16 Q. And do you see there on the front there it says, "Project
17 Inception"? This is not the front page.

18 MS. WILKINSON: Dave, you were going to show that,
19 and I should have had you keep it up there.

20 BY MS. WILKINSON:

21 Q. Let's look at the first page just to identify.

22 what does this say?

23 A. This says, "Project Inception, directors only; privileged
24 and confidential."

25 Q. And what's the date?

1 A. March 23.

2 Q. So was this the presentation that you gave to the board
3 about the Oculus deal that you said was named Project
4 Inception?

5 A. I would have to read it, but I have no reason to believe
6 it's not.

7 Q. Okay. Let's take a look then. Now go to 352, if you
8 could.

9 And this says, "Due diligence review - key area of
10 focus: Samsung relationship."

11 would that be something you would want to explore in
12 considering the Oculus deal?

13 A. Yes.

14 Q. Why -- briefly -- briefly, why would the Samsung
15 relationship be important in this particular deal?

16 A. Because Samsung was the key technology partner. They
17 built the screens, and they built a special kind of screen that
18 could make it so that you could -- you know, we were talking
19 before about how you turn your head and it needs to render
20 quickly. That at the time was only possible on Samsung
21 screens, and we were working with them.

22 Q. All right.

23 A. So they were an important technology product for us on two
24 fronts, and it was important to us that -- that that was a good
25 relationship.

1 Q. There's a list here. Were you doing all this work
2 yourself or do you have folks at Facebook who do this
3 diligence?

4 A. We have teams of folks who are dedicated to this, so, I
5 mean, for the important questions, people will raise the
6 material to me or sometimes I will even be the person asking
7 the question and asking the team to look into it, but, in
8 general, you know, we have a lot of projects going on at a
9 time, and we have a dedicated, you know, legal group and deal
10 group for each effort that we're working on.

11 Q. So did you ask people to look into not only the Samsung
12 relationship but intellectual property, license, and open
13 sources -- open source?

14 A. I don't think I needed to. Those are automatic things
15 that you would look into.

16 Q. The supply chain?

17 A. Yes.

18 Q. Litigation?

19 A. Yeah. These are just kind of standard things.

20 Q. And all the rest of those.

21 So this work would have been done before you closed
22 the deal with Oculus?

23 A. Yes.

24 Q. All right. Now, after you announced the deal -- and I
25 believe Mr. Sammi said -- and you didn't disagree -- was

1 March 25th -- right? -- did you continue to look at some of the
2 issues and talk to some other folks about your concerns and
3 your, you know, your expectations about Oculus?

4 A. Sorry, can you say that again?

5 Q. Yeah. Did you discuss with people -- after you announced
6 the deal, did you just let it go once you announced it, but
7 were you still involved once you announced the deal before it
8 closed?

9 A. No. I mean, I'm -- not only then, but I'm still very
10 involved in it.

11 Q. All right. And we've heard during this trial suggestion
12 that Oculus had some special software as well as hardware.

13 Did you consider Oculus a hardware company or a
14 software company?

15 A. It was mostly a hardware company.

16 Q. All right. Let's take a look at DX1928, please.

17 And this is an email chain from the end of April into
18 May.

19 Let's go down to --

20 A. I'm sorry, where was this?

21 Q. DX1928.

22 A. I don't have it.

23 Q. Okay. Then I will give you a copy. Sorry about that.

24 (Pause)

25 A. Thank you.

1 Q. Sure.

2 So look down at the bottom where the email starts
3 from you, if we could.

4 And are you writing to a whole bunch of folks at
5 Facebook on Tuesday, April 29th.

6 A. Yes.

7 Q. All right. What's the subject of the email?

8 A. Oculus.

9 Q. Now, go down, if you could, and read the second paragraph,
10 at least the first -- one, two -- three sentences, if you
11 could.

12 A. Sorry. Do you want me to read the first three sentences?

13 Q. Please.

14 A. "One important strategy point that we will really need to
15 work through with them is shifting them to become a software
16 business. As an independent company, their goal was to sell
17 their devices at a premium and run everyone's software. But
18 with us, our goal is to own the key software and use their
19 hardware as a vehicle to deploy it."

20 Q. All right. And why was this a concern of yours at the
21 time?

22 A. Well, it goes back to this point around building the
23 platform and the most important apps on top of it. You know,
24 so far, they had built the headsets and the systems to run
25 that, but what I think is going to end up being important over

1 time are what are the social experiences, the different gaming
2 and other experiences that you can actually deliver?

3 People aren't buying this to have a headset. They
4 are buying it to have those experiences, and that's the thing
5 that we need to deliver, and we needed to shift Oculus's
6 culture to some degree and the strategy and the focus towards
7 that.

8 Q. All right. Let's take a look at PX425.

9 Tell me if you have that in your notebook, please.

10 (Pause)

11 A. I do.

12 Q. All right. Let's go down to your -- this is -- there is a
13 response from Mr. Andreessen, but let's go down to your email
14 that starts on Tuesday, May 27, 2014.

15 Do you see that?

16 A. Yes.

17 Q. And can you review the email. Is this also about Oculus?
18 Does it say "Re Oculus integration"?

19 A. Yes.

20 Q. All right. And you tell Mr. Andreessen that you --
21 there's a bunch of management issues that have come up, and
22 then you say, "The biggest other set of questions is around how
23 they build platform network effects."

24 Right? That first sentence.

25 MS. WILKINSON: Can you highlight that, Dave.

1 A. Yes, I see it.

2 Q. All right. Can you read the next sentence, please.

3 A. "I'm currently worried that they're just hardware, and
4 someone could replicate their work relatively easily in a
5 couple of years."

6 Q. And the next one, please?

7 A. "We need to move from a hardware tech advantage to a
8 software platform network effect advantage."

9 Q. Is this consistent with the other emails and the
10 explanation that you gave about them being concerned that they
11 were a hardware company and not an experienced software
12 company?

13 A. Yes.

14 Q. All right. Let's wrap up the timeline, if we could, and
15 go to slide Number 19.

16 You announced the deal on March 25th. Did Oculus
17 have to make any disclosures to you to show you what
18 information you might want to know about the company before you
19 closed the deal?

20 A. I'm sure.

21 Q. Okay. And you said, I think, already that --

22 MS. WILKINSON: Sorry, I may have the wrong number,
23 but it's this one. Sorry about that.

24 BY MS. WILKINSON:

25 Q. You had to reply to government agencies to determine if

1 they had any objections; is that right?

2 A. Yes.

3 Q. And so would that include the Department of Justice?

4 A. Yes.

5 Q. Okay. And these other agencies listed here, the FCC?

6 A. I guess so.

7 Q. All right. And did the deal close on July 21st, 2014?

8 A. I don't know the exact date, but that sounds about right.

9 Q. All right. Now, going forward, once you purchased Oculus,
10 was the company or has the company been divided up into
11 different divisions?

12 A. There are different product teams. I don't think we call
13 them divisions.

14 Q. What are those product teams? What are they
15 responsible --

16 A. There is a mobile group. There is desktop or computing
17 group for -- sorry. Desktop computer -- the Rift product.
18 Those are the two approaches we talked about, and then there
19 are other teams working on the software experiences.

20 Q. All right.

21 A. And platform.

22 Q. So when you refer to the Rift, that's the desktop Rift,
23 right? That's -- you need a desktop computer --

24 A. Yes.

25 Q. -- to experience the Rift?

1 A. Yes.

2 Q. Mobile is a different product?

3 A. Yes.

4 Q. All right. And are you familiar with -- since you said
5 you've been involved -- the innovations Oculus has done since
6 you purchased them in 2014?

7 A. Some of them.

8 Q. Okay. Let's take a look at demonstrative Number 21.

9 MS. WILKINSON: Next one. Sorry. 22. There you go.

10 BY MS. WILKINSON:

11 Q. Up here we have DK1. You said they had this developer
12 model out before you purchased them, right?

13 A. Yes.

14 Q. And then what about the DK2, what is that?

15 A. That was the second developer kit.

16 Q. And what about Crescent Bay? What is that?

17 A. It's their third developer kit.

18 Q. All right.

19 A. And each of these, I think, sold tens or hundreds of
20 thousands of units. They are kits for developers to use. They
21 are not the final consumer product, but there are a lot of
22 them.

23 Q. So when you were asked by Mr. Sammi whether this was --
24 you know, you had bought something that was fully done, when
25 was the first time that Oculus actually put out a consumer

1 product?

2 A. Well, November 2015 was when our collaboration with
3 Samsung -- and they put out Gear VR. That was that product.

4 And then it wasn't until last year, March 2016, that
5 Oculus shipped the first, you know, all Oculus-built product,
6 Oculus Rift.

7 Q. So that was almost two years from when you purchased them
8 until they put out a consumer product?

9 A. Yes.

10 Q. And what is Touch? It looks like they came out in
11 December.

12 A. Touch are the hand controllers, because a lot of what
13 we've talked about so far is just looking around and being able
14 to see the world as if you're in another scene. But, you know,
15 of course, you want to actually be able to change stuff in
16 that.

17 So, you know, we talked about the ping pong
18 experience where you have a paddle and, you know, the touch
19 controller. It is basically this little circle that goes
20 around your wrist with some buttons, and you can kind of pick
21 things up in real life and move it around, and, you know, it's
22 talking about how the -- you have a camera that can track what
23 your position is in the world. It can also track where your
24 hands are. So you can feel like you're in VR and that there is
25 a ping pong paddle there, and you can move your hand to it and

1 pick it up and move it and actually interact in virtual
2 reality.

3 So before Touch, you know, there hadn't been a great
4 experience to do this. Other companies had built these kind of
5 clunky wand products, but the thing about Touch is because it
6 is just a band, you could go actually pick things up with that.
7 If you are holding on to a wand in physical life, then you
8 can't actually go and, like, try to pick something up because
9 you would drop the wand, so that isn't that good.

10 So Touch, I think, is the first, I think, really good
11 VR hand controller. That's, like, the key part of this
12 experience. And, you know, that's something that, you know,
13 Palmer was working on it when I first met him. He was pretty
14 key to the eventual design and what ended up going into that,
15 and this is a real innovation. It is one of the big steps
16 forward.

17 when I keep saying that, you know, there are -- there
18 are five or ten years of work to do, you know, adding hands to
19 the VR experience is one of the key things that just came after
20 the acquisition happened but was really key to the development.
21 I think there are going to be, you know, three or four more big
22 things like that over the next five years that are going to
23 enable this to be a great experience.

24 Q. Let's end on that. What is the next headset set that you
25 see, you and Oculus see in the future of virtual reality?

1 A. Well, the one that I'm excited about next is what we call
2 standalones. So right now you have this mobile experience,
3 which is kind of snap your phone into -- into a headset, and
4 it's cool because you can take it out in the world because it
5 is mobile, but it's a little -- the computing isn't quite as
6 strong, the graphics don't look quite as real as when you have
7 a full computer powering it.

8 But the downside of having a full computer power it
9 is that you can't take a full computer with you, right? So it
10 is just physically there, and you have this wire that's
11 attached to your headset, and that's kind of clunky. So you
12 are moving around in the world, and we want to minimize things
13 that are reminding you that you're not actually in the place
14 that you feel like you're in and having a wire that you might
15 kind of trip over or something gets in the way.

16 So the next product that we're working on that we
17 call the standalone is basically all the computing or as much
18 as we can get from the -- from having a big computer but having
19 it be in a form factor that is similar to the mobile device so
20 you can take it anywhere you want in the world; there are no
21 wires.

22 That's going to be a real big breakthrough in the
23 experience that people can have. It will be much better than
24 what the mobile experience is today, and you won't have the
25 downside of having to stay in your living room and have these

1 wires around. So it's one thing. I mean, it's --

2 Q. Any idea when you are going to have that available to us
3 as a commercial product?

4 A. You know, I'm going get it wrong if I say it, and that's
5 competitive information, so --

6 Q. All right. We will end it on that.

7 A. -- I wouldn't want to say it.

8 MS. WILKINSON: Thank you very much.

9 THE COURT: Take a break about ten minutes. Don't
10 talk about the case.

11 SECURITY OFFICER: All rise.

12 (Jury out)

13 THE COURT: Okay. Anything before we --

14 MR. SAMMI: No. Thank you.

15 MS. WILKINSON: No.

16 THE COURT: All right.

17 (Recess at 2:30)

18 MR. LISY: We do have one small housekeeping matter,
19 Your Honor, before the jury comes in.

20 THE COURT: What is it?

21 MR. LISY: After Mr. Zuckerberg's testimony,
22 Plaintiffs are going to play a short -- about a 15-minute video
23 clip from an Oculus program.

24 Ms. Keefe has something she wants to say about it.

25 THE COURT: Do you have an objection?

1 MS. KEEFE: A very small one, Your Honor, yes.

2 THE COURT: Small or big, they are all objections.

3 MS. KEEFE: I have an objection, Your Honor.

4 THE COURT: Y'all sit down for a minute. I've got to
5 stand up. My back is kind of -- you can sit down.

6 MS. KEEFE: Your Honor, the objection to the
7 portion -- to a portion of the testimony that Plaintiffs have
8 designated for Mr. Giokaris relates to the exact same issue
9 that we talked about yesterday with respect to ripping DVDs.

10 I want to lodge my objection that, again, we think
11 that any of these conversations have nothing to do with the
12 issues in this case, so it's 401, 402, 403, because it's
13 copyrights owned by other individuals that are not alleged in
14 the case, and so they are actually character evidence, bad
15 acts, and don't belong here.

16 THE COURT: Yeah, I get that, and I understand that.
17 I knew at the time that it's -- I think it's a reasonably close
18 question, and y'all lose and I get reversed on that, I don't
19 mind saying that I think it's a reasonably close question. But
20 I think I have got to give them, you know, some latitude in
21 showing that, so I overrule your objection.

22 MS. KEEFE: Thank you, Your Honor.

23 MR. LISY: Thank you.

24 THE COURT: But I don't think it was yesterday.

25 MS. KEEFE: Well, the videos were played yesterday,

1 but the objections made were two days ago.

2 THE COURT: No, no. Do you think it was yesterday?

3 MS. KEEFE: Oh, good Lord, Your Honor, no, it was not
4 yesterday.

5 THE COURT: Oh, look, I like being called "good
6 Lord," but I'm not. I promise you. You and I both know that.

7 MS. KEEFE: Thank you, Your Honor.

8 THE COURT: Your Holiness will be fine.

9 MS. KEEFE: Thank you, Your Honor.

10 THE COURT: Okay. All right. Mr. Sammi, are you
11 ready?

12 MR. SAMMI: I am, sir.

13 THE COURT: Do we have kind of a time? Oh, mercy.

14 MR. SAMMI: Not -- 20 minutes.

15 THE COURT: How much?

16 MR. SAMMI: 20 minutes?

17 THE COURT: I mean, is that a question?

18 MR. SAMMI: It is a question. It a bit of a
19 question.

20 THE COURT: Around about that?

21 MR. SAMMI: I think so.

22 THE COURT: Okay. That's fine. That's fine. That's
23 fine. Whatever it is, it is. It's your time.

24 MR. SAMMI: Thank you, Judge.

25 THE COURT: Okay. Let's bring them in.

1 (Pause)

2 THE COURT: David?

3 Tell David to hold on one second. I have got to
4 answer this.

5 (Pause)

6 THE COURT: Here we go. Thank you.

7 Let's bring them in, David.

8 (Pause)

9 SECURITY OFFICER: All rise for the jury.

10 (Jury in)

11 THE COURT: Y'all be seated. Thank y'all very much.
12 Okay. Mr. Sammi.

13 MR. SAMMI: Thank you, Judge.

14 REDIRECT EXAMINATION

15 BY MR. SAMMI:

16 Q. Hello again.

17 A. Hey.

18 Q. Hi. I have a few questions for you, Mr. Zuckerberg.

19 Now, you felt that Oculus, when you met them, were
20 about three to four years ahead, right?

21 A. I think I wrote in one of the emails I thought they were
22 about three years ahead.

23 Q. Okay. About three years ahead, right?

24 And getting started in VR first has an advantage,
25 doesn't it?

1 A. Yes. I think, in general, getting started first in
2 anything has an advantage.

3 Q. But you don't know how Oculus got started, do you?

4 A. I think I have a good sense.

5 Q. Do you? Let's see. Do you know that the demos that were
6 given in 2012 at E3 in the ZeniMax booth by Oculus -- by John
7 Carmack used id Software? Do you know that?

8 A. I'm not aware of that.

9 Q. Do you know that after that NDA that we looked at was
10 signed, Palmer Luckey was transmitted VR technology from id and
11 the very first demo after demo after demo that Oculus gave to
12 anyone was that VR technology of id's? Did you know that?

13 A. I haven't heard that, and I don't believe that's true.

14 Q. You don't -- you don't believe it's true that Oculus was
15 using -- VR testbed is what we call it in this trial --
16 software from id to demo and build a business after June 2012
17 for months? You don't know that?

18 A. I'm not aware of that.

19 Q. Okay. We saw the Tuscany demo that you were talking about
20 with your lawyer, right?

21 A. Did we see it?

22 Q. I think we saw pictures of it.

23 A. Yes.

24 Q. Okay. Now, have you ever seen the Rage or Doom 3 BFG demo
25 of id Software at ZeniMax that started Oculus?

1 A. I don't think so.

2 Q. Okay.

3 A. And I also try to push back on the characterization that
4 that started Oculus.

5 Q. Well, I just asked you, you didn't know what software
6 Oculus had to use in the first place, did you?

7 A. What do you mean? I mean, they wrote it.

8 Q. No, they didn't. We just went over this.

9 You don't know that whether Oculus, after receiving
10 software from id and ZeniMax under that NDA, used only that
11 software to go around and do demos and build their business.
12 You don't know that, right?

13 A. I'm not aware that that's true.

14 Q. Okay. So how do you know the origins of Oculus?

15 A. Because I spent time with the team, and our team has done
16 technical diligence, and we have looked at the code and the
17 lineage of the code, and we have a good sense that this is
18 authentic code that was built from scratch by this team, and,
19 you know, we know, of course, now since they've joined
20 Facebook, that everything going forward is done with all the
21 processes that we have at the company.

22 Q. In all the years at Facebook since you've bought Oculus,
23 since you've been working with these three gentlemen, it never
24 came up that they were using our demos to build their business
25 in 2012 after signing that NDA? That never came up?

1 A. Why would it?

2 Q. How did it begin? Great startup you guys got here. Where
3 did you get the software?

4 we know you started in your dorm at Harvard. We all
5 know that story. Wouldn't you ask Oculus how they got started?

6 A. We did talk about that.

7 Q. Apparently you didn't talk about VR testbed, Rage, Doom 3
8 BFG, E3, the months that Oculus took that software around; you
9 didn't talk about that?

10 A. No. I mean, we talked about the parts of the founding of
11 Oculus and the start of VR that were relevant, and I think that
12 your client in this case probably has an inflated view of the
13 importance or relevance of anything that they have to VR.

14 So I'm -- I'm not sure what you want me to say.

15 Q. Okay.

16 A. But, I mean it's --

17 Q. I just want you -- I just want to know if you know, so I'm
18 going to ask you another question. Okay?

19 Three gentlemen: Brendan Iribe, Palmer Luckey, and
20 Nate Mitchell -- I'm sorry, four gentlemen. Brendan Iribe,
21 Palmer Luckey, Nate Mitchell, and Michael Antonov.

22 Do you know who those four gentlemen are?

23 A. Yes.

24 Q. Okay. They were very early on Oculus founders, right?

25 A. Yes.

1 Q. And --

2 A. Say the -- say the names again so I can confirm.

3 Q. Brendan?

4 A. Yes.

5 Q. Iribe.

6 Nate Mitchell?

7 A. Yes.

8 Q. Palmer Luckey?

9 A. Yes.

10 Q. Michael Antonov?

11 A. Yes.

12 Q. Okay. Let's take those four individuals. They were
13 Oculus in the beginning, right? Along with Palmer -- and
14 Palmer Luckey started at Oculus. They were Oculus in the very
15 beginning, right?

16 A. Yes.

17 Q. Okay. Now, do you know whether those four individuals in
18 the months after E3 June 2012 had any software of their own
19 that could even make the Oculus Rift work? Do you know?

20 A. I wasn't there at the time, so it's hard for me to give a
21 definitive answer as if I were, but, you know, the facts would
22 suggest that they clearly did, because, first of all, the demo
23 worked. And then, second of all, once we've done technical
24 analysis backward looking, you know, we, I think, are pretty
25 confident that they wrote the code, and that if you look at the

1 lineage of the code, that that's where it came from.

2 Q. You're talking about the demo that you saw, right?

3 A. No. I'm just --

4 Q. Is that the one you're talking about?

5 A. No. I'm just answering your question.

6 Q. Okay. You've never seen the demos that Oculus used with
7 people like Valve, Epic, Unity? They took it to Copenhagen.
8 They took it to Korea. You've never seen those demos, that
9 software that was written by John Carmack at id and transferred
10 under the NDA. You've never seen those demos?

11 A. No. I'm not aware of anything that you're talking about.

12 Q. Okay.

13 A. And, you know, I think that there are a lot of demos that
14 a lot of different parties probably built on Oculus. It was a
15 developer platform, after all, and there's no reason why I
16 would have seen all of them, including the ones before I
17 started getting interested in Oculus overall.

18 Q. So you suggest, sir -- you said that -- you talked a lot
19 with your lawyer about diligence, right? Diligence?

20 A. Yes.

21 Q. You talked a lot with your lawyer about diligence, and
22 it's important, right?

23 A. Yes. For any deal, you want to make sure you understand
24 what is going on with the company, so you want to make sure
25 that you understand who the team is, who the key people are,

1 what they are like, their talent, their values. You want to
2 make sure that you understand what's technically there and what
3 the product is that's there and you want to make sure that the
4 company is financially sound and set up and you want to make
5 sure that you understand the legal infrastructure and legal
6 documents around the company as well as a handful of other
7 things that I think that we discussed before the break.

8 Q. Okay. Let's hold on diligence for just a second. I need
9 to go back to your understanding, if any, of the real origin of
10 Oculus.

11 we talked about the fact that you don't know about
12 the Doom 3 BFG demo, the Rage demo that was transferred to
13 Palmer Luckey under the NDA. You will agree with me that you
14 didn't know about that, right?

15 A. Yeah, I mean, I'm not aware if what you're saying is true.

16 Q. Now -- sure.

17 Do you -- you don't know about technical information,
18 emails, solutions, from id Software, John Carmack, for months
19 after that NDA was signed that went into Oculus and was used by
20 Oculus. You don't know anything about that?

21 A. To the contrary, I mean, I've received reports from
22 Brendan and others that we're quite confident that there is no
23 other code that is used in the product.

24 Q. Just set code aside. We read that NDA, right? It's got
25 other things besides code, and there's code. And we'll get to

1 that in a second, but there were other things in the NDA
2 besides code, right?

3 A. Yes.

4 Q. Remember the long list?

5 A. Yes.

6 Q. Yeah.

7 okay. When you worked with these gentlemen for years
8 after you bought their company, you guys never talked about,
9 hey, those early days and how, you know, I needed help on this,
10 and I asked John Carmack, and I got this solution, and it was
11 fun working on stuff with id.

12 That never came up?

13 A. I don't think so.

14 Q. Okay. would it surprise you that there's something called
15 interrogatories in this litigation where we ask the other side
16 questions, your Facebook, Oculus, and the individuals, and they
17 write these answers back that are answers from the party, okay.

18 would it surprise you that there's a whole chart
19 listing the very first demo E3 from Oculus and everywhere
20 Oculus took id Software's VR testbed and Doom 3 BFG around the
21 world?

22 would it surprise you that a list like that exists?

23 A. I certainly haven't seen that, and I'm not aware of it.

24 Q. But you come in here today, sir, and you say you think our
25 claims are meritless, but you don't know that?

1 A. Well, if you're asking if I know every single detail of
2 the case, the answer is, of course, no.

3 And I have a legal team and a deal team, and they're
4 really good people. And I trust them to be in the details of
5 this, and I trust their assessment of this.

6 I, of course, have been very involved with the Oculus
7 team and the product, so I have a good sense of the people that
8 we're dealing with here. And when my legal team says that
9 we've looked into this and we're confident, then that
10 definitely fits my own impression from the work that I've done
11 with these folks.

12 Q. Okay. Let's talk about diligence. Okay? You said that
13 the most important thing in due diligence is to make sure that
14 the product is good.

15 Isn't the most important thing in diligence to make
16 sure that the technology that you're buying is actually owned
17 by the people you're buying it from?

18 A. I mean, I think you could say that these are all important
19 things and parts of diligence.

20 Q. Okay.

21 A. I mean, certainly we, I don't think, would have gotten to
22 the point of evaluating IP ownership if we didn't think that
23 the product and technology were good.

24 So, you know, that's what I was talking about there,
25 is, you know, we'd spent -- we had a bunch of demos, spent a

1 lot of time talking to the team and looking at demos and the
2 technology to understand that before even getting to the point
3 of doing any legal or financial diligence.

4 Q. You talked about diligence, and I think you said you
5 wanted to be clear that it wasn't that you just woke up one day
6 and decided to buy this company, right?

7 Do you remember saying that?

8 A. Yes.

9 Q. Okay. Now, what I can't figure out is if you were doing
10 your diligence before you announced the deal, why does Facebook
11 tell us that the first time Facebook ever saw the NDA -- not
12 you, Facebook -- was on the day we sued Oculus?

13 You never found it in any of the diligence?

14 A. I don't know, but I guess that's the case.

15 Q. Okay. I'm going to buy a company for \$3 billion, and the
16 founder signed by his hand an NDA that covers virtual reality
17 technology coming from a third party and the essence of the
18 business itself is virtual reality technology.

19 wouldn't that be an important document to find?

20 MS. WILKINSON: Your Honor, I'm going to object to
21 the mischaracterization of the evidence and the testifying
22 from --

23 THE COURT: Well, it's cross. I'll let him -- I'll
24 let him answer that.

25 overruled.

1 THE WITNESS: You know, in general, it's the Oculus
2 team's responsibility to produce all relevant documents. I
3 can't speak to why they didn't in this case.

4 BY MR. SAMMI:

5 Q. Wait. Are you saying that Oculus didn't tell you? They
6 hid it from you?

7 A. Yeah. I mean, I'm not saying they hid it, but I'm saying
8 that in general, the way that this will work, as I'm sure you
9 know, is that whether you're doing an investment or other kind
10 of acquisition, that the company will open up some kind of room
11 with all of their documents in it, so that way an investor or
12 an acquirer can go in and look at all the documents.

13 So one of two things was the case, right? I would
14 assume, right, either our team missed it or it wasn't in there.

15 Q. Okay.

16 A. I don't know for a fact. You can ask plenty of other
17 people in this -- in this -- in this -- in this litigation, but
18 my guess is it probably wasn't in there, and it's probably
19 because it wasn't an Oculus document but it was because
20 something that Palmer did separately. But, you know, I'm
21 really just speculating at this point.

22 Q. I think so.

23 You've told us that legal diligence is "going through
24 all the legal documents to understand everything that's there,"
25 right? That's important to diligence, isn't it?

1 A. Of course it is.

2 Q. Yeah.

3 Okay. Do you remember the slide that your lawyer put
4 up on Project Inception?

5 First of all, the name Inception, is that from the
6 movie with Leonardo DiCaprio about corporate espionage, that
7 one?

8 A. I would assume that when Amin came up with that name, he
9 was more talking about the reference to the movie where they
10 create a reality for a person.

11 Q. A reality.

12 MR. SAMMI: Okay. Let's see if I can get that slide
13 up. It's DX544, and we'll go to Mr. Frank. I'll identify it
14 to you by Bates number if I can. It's FB2352. Just take a
15 second.

16 (Pause)

17 MR. SAMMI: There it is. This is -- this is the --
18 this is from the board slides that --

19 THE COURT: What's the number?

20 MR. SAMMI: Your Honor, this is DX5444.

21 THE COURT: Oh, DX?

22 MR. SAMMI: Yes, sir.

23 THE COURT: Okay. Go ahead.

24 BY MR. SAMMI:

25 Q. This is from the slide deck that you gave to the board of

1 directors of Facebook, I think, on Sunday night before the deal
2 was to be announced on Monday?

3 A. I think that's probably true, except I don't think we
4 announced the deal on Monday, as you know.

5 Q. That's right. They announced it on Tuesday.

6 Okay. Due diligence review, we went through a couple
7 of these.

8 Do you see that one, Litigation, there?

9 A. Yes.

10 Q. Isn't it true that id Software or ZeniMax never came up in
11 any discussions of intellectual property on the call that you
12 had with the board?

13 A. I don't remember, but I assume that's true. As I
14 testified earlier, I had never even heard of ZeniMax at this
15 point.

16 Q. Okay.

17 A. And, you know, when we had looked at -- and when we had
18 gone out and done our analysis of who else was in the field
19 and, you know, might have a claim to this, ZeniMax was nowhere.

20 So this is pretty standard. I mean, whenever you're
21 doing some kind of deal, you know, part of the diligence is you
22 want to understand the litigation that a company that you're
23 investing in or buying might be a part of.

24 So, you know, it's good that we reviewed that with
25 the board, but from my perspective, it makes complete sense

1 that this wouldn't have come up then.

2 Q. It's also true that nobody -- you don't remember anyone
3 else bringing it up, do you, on the board call?

4 A. I don't.

5 Q. Got it. Okay.

6 Now, we sued Oculus before you closed the
7 transaction, right?

8 A. Yes.

9 Q. Okay. Now, did you tell the board of Facebook before you
10 closed the transaction and the money changed hands that -- I'll
11 take it in parts -- that you got a letter from ZeniMax and id
12 saying they have claims to VR property?

13 A. I did not personally, and I don't know if we did. But I
14 assume that our legal team would have given that as part of a
15 normal course, legal update on our business.

16 Q. But you don't know for a fact, right?

17 A. I do not.

18 Q. Now, after we sent you the letter, then you know who we
19 are, right?

20 A. Once our legal team told me.

21 Q. Okay. How about after we sued you -- we sued Oculus but
22 before you closed the deal? Did you tell the board that
23 Oculus, the company you're trying to buy, has been sued by
24 ZeniMax claiming that it owns their fundamental technology?

25 A. I think I just answered that question.

1 Q. You didn't -- you answered the question about the letter.
2 Now I'm asking you about the lawsuit that came after the
3 letter.

4 A. Oh, yeah, I'm actually not sure if we would have
5 communicate -- even communicated to the board a letter, but
6 we -- I assume we communicated a lawsuit.

7 Q. Do you know that you communicated the lawsuit to the
8 board?

9 A. I mean, I don't have specific knowledge of when that
10 happened, but I would assume that that's part of what the
11 company does, is it updates the board on litigations that the
12 company is a part of.

13 Q. That's your assumption, but as the chairman of the board,
14 you can't tell us one way or the other?

15 A. I know that in every board meeting we have a session where
16 we talk about the legal update of the company, and this is part
17 of it, of litigations overall.

18 Q. Let me talk to you for a minute, sir, about a topic of
19 conversation that you talked about with your lawyer, and that
20 was Facebook trying to turn Oculus in -- from a hardware
21 company into a software company.

22 Do you remember that?

23 A. Yes.

24 Q. You talked about killer apps, right?

25 A. Yes.

1 Q. Let me get this straight. Let me use an example.

2 Apple sells iPhones, right?

3 A. Yes.

4 Q. Apple has a lot of people who write software to make the
5 phone work, correct?

6 A. Yes.

7 Q. That's different than software like apps that you put on
8 the phone that help you sell it as well, right?

9 A. Yes, they do both.

10 Q. Yeah. One software makes the thing work -- right? -- and
11 the other software is an app or content, right?

12 A. Yeah. And there other kinds of software too. Probably
13 most of what Apple is doing is building the operating system,
14 so the UI that you use when you open up your -- when you start
15 your --

16 Q. Exactly. So that my iPhone, which, according to Your
17 Honor, I didn't want it to ring, so I left it back in the
18 room -- my iPhone --

19 THE COURT: Do you want to look at this one?

20 MR. SAMMI: No, that's -- I don't want to touch the
21 Judge's iPhone.

22 BY MS. SAMMI:

23 Q. Here's one. So if -- I need software to make this into a
24 phone, otherwise, it is just a nice expensive kind of deck of
25 cards, isn't it?

1 A. Yes. You need both.

2 Q. Right. You need both.

3 Now, aren't you, in that email that we saw, talking
4 about turning Oculus into a company that you can leverage with
5 applications to play on a headset, virtual reality headset, or
6 use, but you're not talking about the software that makes the
7 Rift work itself, right?

8 A. That's right.

9 And I think there's an important distinction here. I
10 think people would typically always call Apple a hardware
11 company even if there is some software that goes into running
12 what they do.

13 Similarly, I think most people think about Facebook
14 as a software company or a company with software services even
15 though we also design hardware, right? We design our own
16 servers. We design a lot of physical stuff.

17 So -- so, yes, I -- I'm mostly referring to the thing
18 that the company does, which, you know, in the case of what
19 Oculus did, was -- the vast majority of it was hardware.

20 Q. Okay. And that hardware is a nice expensive brick unless
21 it has software that makes it actually work?

22 A. I think you're mischaracterizing what I'm saying --

23 Q. Okay.

24 A. -- because what you're kind of asserting is that the
25 software is the key thing and the hardware doesn't do much, and

1 my point is that I think a lot of companies build both software
2 and hardware, but the key thing that they are doing could be
3 one or the other, and the other could just be supporting.

4 when we bought Oculus, they were clearly primarily a
5 hardware company. Was there some software there? Yes. But
6 what we needed to do was turn them into primarily a software
7 company for the strategy to work.

8 similarly, I do think you would say that Apple, even
9 though they write some software, they are primarily a hardware
10 company. They sell hardware.

11 Q. You said when you bought Oculus there was some software
12 there, right?

13 A. Yeah, of course.

14 Q. What if there was no software there?

15 A. Then we -- it wouldn't work, and we wouldn't have bought
16 the company.

17 Q. Precisely.

18 And as we just covered before, you don't know what
19 software Oculus did or didn't have in June, July, August,
20 September, October of 2012, right?

21 A. I don't think that's what I said.

22 Q. Do you know what software they had in June, July, August,
23 September, October of 2012?

24 A. I mean, you're asking me if I was there at the time. No.
25 But, I mean, have we done analyses after the fact about the --

1 the lineage of where it came from? Yes.

2 Q. Okay. And I see your lawyer took down all the stuff I had
3 on the board.

4 we know that when you try to look at the lineage, you
5 can compare a lot of things, but you will agree with me that
6 you can't compare things that have been wiped from computers,
7 right?

8 A. No, I didn't say that.

9 Q. No, I'm saying you will agree with me that you can't
10 compare things that have been wiped from computers, right?

11 A. I mean, if it's gone, then it is gone. It is hard to
12 compare. But there are often ways that you can go back and
13 look at how something came together.

14 Q. And if a Court-appointed expert in this case says
15 irretrievably gone, that means gone's gone, right?

16 A. Yes. And I guess what I'm saying, although, you know, I'm
17 not the expert on this, but because you're asking me I want to
18 make sure to give a complete answer, is that even if some part
19 of code or some system is missing, you can often still tell the
20 lineage of where it came from.

21 So, I mean, you will want to have someone specific to
22 testify about that who is more of an expert on that than me,
23 but I just want to make sure that your characterization isn't
24 an oversimplification about not being able to trace where this
25 came from.

1 Q. Okay. I understand that, and we're going to get to that
2 testimony in this case. Thank you.

3 Now, isn't this case, Mr. Zuckerberg, about whether
4 Oculus was built on stolen technology? Isn't that why we're
5 here?

6 MS. WILKINSON: Objection, asked and answered.

7 THE COURT: Sustained.

8 BY MR. SAMMI:

9 Q. In your testimony today, you said, "It is really important
10 to make sure the foundation you're building on is something you
11 own."

12 I think we have a slide for that.

13 I made this over the -- not me. My very talented
14 team.

15 It's from the transcript.

16 "And, you know, when you're building something, you
17 know, like you say, it's really important to make sure that the
18 foundation that you're building upon is something that you
19 own," right?

20 You said that?

21 A. Right.

22 Q. Do you remember saying it?

23 And what you mean by that is that if the foundation
24 you're building on is technology you don't own, then you don't
25 own the foundation, right? Doesn't that make sense?

1 A. I -- yeah, I agree with the point that you're making even
2 if I disagree with the underlying assumption that you are
3 saying that we don't own the foundation.

4 Q. Got it.

5 I'm saying if -- if this jury finds that the
6 foundation of Oculus is stolen from ZeniMax and id, anything
7 you're building on it, you don't own that, right?

8 A. I think you need a more nuanced legal analysis of that.
9 I'm not sure -- I would imagine that in that case there would
10 be -- that would be a serious issue, but I'm not sure whether
11 that implies that everything that's built on top of that is not
12 owned by you.

13 Q. Okay.

14 A. Because there is additional intellectual property and
15 contributions that are made, so --

16 Q. That's like the paint and the bell on the bike, right?
17 You paid for the paint, you paid for the bell, but it's still
18 my bike?

19 A. I mean, I think that the analogy to a bike is extremely
20 oversimplistic here.

21 Q. Probably.

22 A. This would be like someone --

23 Q. I agree with you.

24 A. -- who created a piece of like a bar that might go on a
25 bike and then someone built a spaceship out of it.

1 Q. Right.

2 A. So, I mean, yes -- and we're kind of -- we're sitting here
3 talking about whether the bar was -- was taken from someone
4 else, and I'm saying it wasn't, but what you are saying is,
5 even if it was, does that mean that someone else now owns the
6 spaceship? Probably not, but there would be need to be a legal
7 discussion about where the ownership would be there.

8 Q. Yes. And I think that's why -- one of the reasons we're
9 here.

10 But it is really important, right? The foundation is
11 really important?

12 A. Yes.

13 Q. And in order to know about the foundation of Oculus,
14 wouldn't you need to go back to those early days of Oculus to
15 figure out its foundation?

16 A. You'd certainly want to look there.

17 Q. Okay. And we looked at one of those documents, which is
18 the NDA, right? Isn't that part of the foundation of Oculus?

19 MS. WILKINSON: Objection, foundation.

20 THE COURT: I'm sorry?

21 MS. WILKINSON: Objection, foundation.

22 THE COURT: Sustained.

23 BY MR. SAMMI:

24 Q. You know what NDAs are, right?

25 MS. WILKINSON: Objection, asked and answered.

1 THE COURT: He has answered that. Sustained.

2 MR. SAMMI: Okay.

3 BY MR. SAMMI:

4 Q. I think we've asked some questions in the case, and we've
5 talked about whether something was used or not. Do you
6 remember that? We were talking about the call you had with
7 Brendan and, you know, whether something was used, right?

8 A. Yes.

9 Q. I want to talk to you about that concept for a second.
10 Okay?

11 Do you have an explanation as to why Oculus would
12 want to enter into a nondisclosure agreement that allows them
13 to get virtual reality software from id and ZeniMax and they
14 not want to use it?

15 MS. WILKINSON: Objection, foundation.

16 THE COURT: Sustained.

17 BY MR. SAMMI:

18 Q. Mr. Zuckerberg, I think you've said you're also confident
19 that Oculus's technology and Facebook's technology is its own.
20 I understand your position there, and I understand that.

21 That's your position, right?

22 A. Yes. And that's -- I take this case seriously, and that's
23 why I wanted to come and testify in person, and that's the main
24 message that I want to communicate, is that Oculus products are
25 built on Oculus technology, and the --

1 Q. Okay. If you're confident, sir, that Oculus was built on
2 technology that you own, how do you explain the intentional
3 destruction of evidence in this case?

4 MS. WILKINSON: Objection, Your Honor. Argumentative
5 and foundation.

6 THE COURT: Sustained.

7 MR. SAMMI: Pass the witness, Your Honor.

8 MS. WILKINSON: No questions, Your Honor.

9 THE COURT: All right. You can step down, sir.

10 Thank you. Appreciate it.

11 THE WITNESS: Thank you.

12 (Pause)

13 THE COURT: Y'all need a break or no? Yes? Maybe?

14 MS. WILKINSON: I'm just going to walk him out, Your
15 Honor.

16 THE COURT: Okay.

17 (Pause)

18 THE COURT: Don't take pictures in the hall, y'all.
19 Okay.

20 MS. WILKINSON: Let me clean up my podium, sir.

21 Sorry about that.

22 THE COURT: It's okay. All right. Are you ready?

23 MR. SAMMI: Yes.

24 THE COURT: You're going to play a movie right now?

25 MR. SAMMI: I'm going to play a short movie.

1 Plaintiffs' call by video Mr. Peter Giokaris, a
2 programmer at Facebook.

3 THE COURT: Okay.

4 (Pause)

5 MR. SAMMI: It's coming, Your Honor.

6 THE COURT: Okay.

7 MS. WILKINSON: Can you lower the temperature, Your
8 Honor?

9 THE COURT: I will if that's what you're asking me
10 to.

11 MS. WILKINSON: No, thank you.

12 THE COURT: In my last trial, one of the jurors wore
13 a Russian hat and gloves, so -- it does keep you alert.
14 Frostbite. We have had very few jurors die of frostbite but a
15 few.

16 MR. SAMMI: I'm being told about 20 seconds, Your
17 Honor.

18 THE COURT: It's okay.

19 MR. SAMMI: 20, 30 seconds.

20 THE COURT: It's technology. As great it is, it is
21 still technology.

22 MR. SAMMI: We don't have Mr. Zuckerberg on our side
23 or John Carmack anymore for that matter.

24 THE COURT: What we really need is -- what is it? --
25 the 20- or 30-second clock?

1 MR. SAMMI: Yes, sir.

2 THE COURT: That we now have in basketball.

3 MR. SAMMI: The shot clock?

4 THE COURT: It has that huge (indicating) that goes
5 to the other side. That would be great.

6 (Pause)

7 MR. SAMMI: It -- the computer, I think, is having
8 some issues. It crashed. It will just take a few minutes.

9 THE COURT: Do you want to call a live witness? Do
10 you want to call your live witness?

11 MR. SAMMI: We would play the video first, Your
12 Honor. If you will just indulge us for just a minute or two,
13 maybe we could --

14 THE COURT: Are we going to have prayer? What are we
15 going to do here?

16 MR. SAMMI: We can tell some jokes.

17 THE COURT: I'm all out of those. I'm out of them.

18 (Pause)

19 (video played as follows:)

20 (The witness was sworn)

21 Q. Could you please state your full name --

22 (video stopped)

23 MR. SAMMI: Thank you, Your Honor, for the
24 indulgence. We're sorry about that.

25 THE COURT: Sure, Mr. Sammi.

1 (video played as follows:)

2 VIDEO DEPOSITION OF PETER GIOKARIS

3 (The witness was sworn)

4 Q. Could you please state your full name?

5 A. Yes. Peter Giokaris.

6 Q. Mr. Giokaris, where do you work today?

7 A. I work at Facebook.

8 Q. Before you worked at Oculus, did you ever see demos of the
9 Oculus Rift?

10 A. Yes, I had.

11 Q. In what context?

12 A. I saw -- they were actually at a Unity conference in
13 Amsterdam, which I was at. So I was able to hear Palmer and
14 Nate talk about the Oculus Rift, and I saw their video that
15 they used for their Kickstarter campaign at the time.

16 That was the first time I saw anything concrete about
17 Oculus, even though I had known about them prior to because of
18 just reading about them.

19 Q. Got it.

20 A. The first time I saw a demo of something on the Rift was
21 when I went in and talked to them.

22 Q. And so when was this meeting?

23 A. October 31st of 2012.

24 Q. And so what did you see -- did you try on a Rift?

25 A. Yes.

1 Q. What did you see?

2 A. I saw Rage, the demo Rage.

3 Q. Okay.

4 A. And I also saw Doom.

5 Q. So what did you think when you tried on the Rift as
6 compared to what you were working on?

7 A. I was very impressed with it.

8 Q. Okay. Why?

9 A. The graphics were very sharp. The field of view was
10 amazing, and the latency was very low. And it was very light.

11 Q. And so when you say the graphics were sharp, that was on
12 Doom?

13 A. The graphics were great. Yeah, they --

14 Q. On Doom?

15 A. I wouldn't say "sharp." They were actually beautiful.

16 Q. On Doom?

17 A. No.

18 Q. On what?

19 A. On Rage.

20 Q. On Rage?

21 A. Yes.

22 Q. Okay. How was the distortion?

23 A. The distortion looks really good.

24 Q. Okay.

25 A. As far as -- there wasn't -- like, as far as lack of, it

1 really, you know, blew my mind how -- you know, how good it
2 was, and, you know, depend -- based on the fact that the field
3 of view was so large.

4 Q. Did you have an understanding at that time as to whether
5 Mr. Luckey was a software developer?

6 A. I did not.

7 Q. Okay. Do you have any understanding about whether
8 Mr. Luckey today is a software developer?

9 A. I do know that he's not a software developer.

10 Q. Was John Carmack ever discussed during your four-hour
11 meeting at Oculus on October 31, 2012?

12 A. Seeing that I was playing Doom as a demo, I don't recall
13 if his name came up, but if it did, it would have been in the
14 context of the demo.

15 Q. Did you mention the name John Carmack?

16 A. If I did, it would've been because of the demo that I had
17 seen.

18 Q. Okay. And what would you have said?

19 A. I'm not sure exactly what I would've said, except his name
20 would've come up if I was playing a game of Doom, knowing that
21 Doom was John Carmack.

22 Q. And you knew that Doom was John Carmack?

23 A. Yes.

24 Q. Okay. What about Rage? You know that Rage is John
25 Carmack?

1 A. At the time, I didn't know until I was told.

2 Q. Okay. Did you have to sign any NDA or anything prior to
3 your meeting?

4 A. No.

5 Q. So let's talk about some of your work that you did at
6 Oculus when you started there.

7 A. Okay.

8 Q. You were a coder, right?

9 A. Yes.

10 Q. So did you ever work on a fisheye shader for Unity
11 integration?

12 A. Yes.

13 Q. Okay. And can you tell me what that is?

14 A. Sure.

15 So a fisheye shader or a barrel distortion, lens
16 correction shader, would be something that would correct the
17 distortions that become evident when looking through a lens at
18 a flat screen.

19 Q. Okay. And so what -- what was your role in -- in that at
20 Oculus?

21 A. I needed to integrate a lens correction into Unity in
22 order for it to work properly.

23 Q. Did you wind up doing that?

24 A. Yes.

25 Q. Did you write code to integrate a lens correction into

1 Unity?

2 A. I did.

3 Q. I'm going to hand you what's been marked as Giokaris 1,
4 which is a file called fisheyes shader.shader produced from a
5 production called Oculus-production-Perforce.TC.

6 Do you recognize this?

7 A. I do.

8 Q. Can you tell me generally what it is?

9 A. This is a source code in text file for doing a fisheye
10 shader for the Unity integration of the Rift.

11 Q. Okay. So if you can help me, can you --

12 A. Sure.

13 Q. -- help me understand what Giokaris 1 does?

14 A. Sure.

15 So this is a lens shader code, which is meant to
16 correct the distortion lens of the Rift.

17 Q. And all of this does that?

18 A. Not all of it.

19 Q. What portion is primarily directed towards correcting that
20 which you described?

21 A. The portion that -- this is a -- so this is the first
22 check-in, I believe, or a first check-in of the code. It shows
23 two different warp functions, HMD warp and HMD warp 2.

24 Q. And can you tell me what that portion of code is doing?

25 A. This is a function that will -- it's actually a function

1 that will correct the lens -- correct for the lens distortion
2 of -- of a render buffer, which is what a flat -- which is a
3 flat pixel -- or, sorry, a flat square that gets rendered to in
4 traditional graphics.

5 Q. So we were just talking about HMD warp 1, which is around
6 line 31 to 42?

7 A. Yes.

8 Q. And can you tell me about HMD warp 2, where that is?

9 A. So HMD warp 2 is -- has the same functionality as HMD
10 warp 1, or is meant to have the same functionality. They're
11 just different implementations.

12 Q. And what lines is HMD 2? What lines --

13 A. Oh, line --

14 Q. -- are directed toward HMD warp 2?

15 A. Line 44 to line 59.

16 Q. Why are there two?

17 A. One of them is a derived version of code that was seen
18 within a -- the -- I believe the Rage demo. There was a shader
19 file there, and that was used. And I believe I looked at it
20 and played with it to see what the outputs would be on it.

21 Q. What --

22 A. The other one is an internal one that was written
23 internally.

24 Q. So which is which?

25 A. I don't recall now. I believe the first one is ours, as

1 far as within Oculus, and the other one is the derived version
2 from what I was looking at when I was looking at some of the --
3 when I was looking at the source that was within Rage.

4 Q. And do you know where this source that was within Rage
5 came from?

6 A. Well, I would -- the source came from the creator of Rage,
7 which would be John Carmack.

8 Q. And how did you get ahold of that?

9 A. I was given access to it from Oculus.

10 Q. By whom?

11 A. I believe it would've been Michael Antonov.

12 Q. What part of Giokaris 1 did you write?

13 A. What part of Giokaris 1 did I write? I wrote everything.
14 I wrote all this code.

15 Q. How about the comment on line 49, did you write that
16 comment?

17 A. I do not recall.

18 Q. But you -- you still -- you wrote everything in Giokaris
19 1?

20 A. Well, being that I had -- actually was playing with the
21 source that was already there and trying to fit into Unity, it
22 might have been a copy and paste.

23 Q. Okay. What might have been a copy and paste?

24 A. Those -- those lines that you just pointed to.

25 Q. So the lines that I'm discussing, for example, in HMD 2 --

1 HMD warp 2 could have been a cut and paste from Rage code into
2 this code in Giokaris 1, which was checked into Oculus
3 Perforce?

4 A. Yes.

5 Q. Can you tell me why you cut and pasted HMD warp 2 into
6 Giokaris 1?

7 A. Sure.

8 Basically, I saw the file within Rage, which was
9 given to me to use as a testbed for the work that I was work --
10 that I was doing. And looking at the code, I thought it would
11 be great to see if I could get that to work, as a means of
12 exercise to understand different types of distortion.

13 Q. Okay. I'm going to hand you what's been marked as
14 Giokaris Exhibit 3.

15 (video stopped)

16 MS. WILKINSON: Objection.

17 Your Honor --

18 THE COURT: Oh, there's something besides what was --

19 MS. WILKINSON: Yeah, there's two things, Your Honor.

20 And I don't think you told the jury that both their
21 designations of the deposition get played and ours, and the one
22 of ours that said it didn't work, they didn't play.

23 MR. SAMMI: First of all, there's no implication of
24 intentionality.

25 THE COURT: No, no, I agree with that. There is not

1 any of that, but are we going to play theirs?

2 MR. SAMMI: Yeah. we're playing theirs, right?

3 (video played)

4 BY MR. SAMMI:

5 Q. And did -- did you get it to work?

6 A. I believe I did not.

7 Q. You did not.

8 And do you know why you didn't get it to work?

9 A. The output was just not correct.

10 (video stopped)

11 MR. SAMMI: I'm trying. I'm trying my best.

12 THE COURT: Stop it. Stop it.

13 MS. WILKINSON: Can I ask you to go back to the
14 question before this?

15 MR. SAMMI: If you can just read the line number,
16 we'll go back to any question.

17 MS. KEEFE: Go back to page 83, line 2.

18 MR. SAMMI: Page 83, line 2.

19 (video played)

20 BY MR. SAMMI:

21 Q. Can you tell me why you cut and pasted HMD warp 2 into
22 Giokaris 1?

23 A. Sure. Basically I saw the file within Rage, which was
24 given to me to use as a testbed for the work that I was work --
25 that I was doing. And looking at the code, I thought it would

1 be great to see if I could get that to work as a means of
2 exercise to understand different types of distortion.

3 Q. And did -- did you get it to work?

4 A. I believe I did not.

5 Q. You did not.

6 And do you know why you didn't get it to work?

7 A. The output was just not correct. I was not getting -- I
8 was not getting the values that I wanted to -- or I just wasn't
9 getting the output that I expected, and I ended up using a
10 different source base, which did work.

11 Q. And what was that other source base?

12 A. It was a source that -- that was within the Oculus SDK
13 that was given to me.

14 Q. Okay. And what was that?

15 A. It was a source code that was used to do lens distortion
16 at the C++ level.

17 Q. And what was it? From where did that come?

18 A. From where? From the Oculus SDK that Michael Antonov
19 provided me.

20 Q. And do you know if Michael Antonov wrote that?

21 A. I don't know if he wrote that.

22 Q. Do you know who is the author of that?

23 A. I would speculate this would have been either Michael
24 and/or Andrew Reisse, who was our graphics expert at the time.

25 Q. I'm going to hand you what's been marked as Giokaris

1 Exhibit 3, which is a file -- a source code file entitled
2 OVRlenscorrection.shader@366.

3 Do you see that?

4 A. I do.

5 Q. So can you tell me what generally Giokaris 3, the code in
6 Giokaris 3, is directed towards?

7 A. So this code is a rename of -- of the fisheye shader.
8 It's a further iteration down the line of this shader, and it
9 includes three different HMD warp functions.

10 Q. Let's start with the third one.

11 A. Okay.

12 Q. The third one is the same code from the Rage demo as is
13 found in Giokaris 1, correct?

14 A. I believe it is. I'm just looking through it just to make
15 sure.

16 (Pause)

17 A. Yes, it's the same code.

18 Q. Why did you leave it in?

19 A. Well, it's been, you know, a form of reference just to
20 have different ways of looking at the same functionality.

21 Q. At any of the companies that you were working at, did any
22 of your bosses ever send you forwards of emails that contained
23 source code from outside the company?

24 A. When I first started, there was potentially email --
25 emails of that nature.

1 Q. And what's the culture of start-ups, to your
2 understanding?

3 A. Faster, just more loose, I guess is the term, but --

4 Q. Do you think it's appropriate to use another company's
5 source code for the benefit of the company you're employed at?

6 A. I feel if the code was given to the company to use, then
7 it would be okay.

8 Q. Have you ever ripped intellectual property for Oculus --

9 A. I have not ripped property for Oculus.

10 I'd like to mention --

11 Q. Sure --

12 A. -- YouTube.

13 Q. Uh-huh.

14 A. And borrowing or taking video from there in order to use
15 that.

16 Q. Okay.

17 A. So --

18 Q. And in what capacity did you take video from YouTube and
19 use it?

20 A. That was to be used in an application that I was working
21 on.

22 Q. Okay. What type of videos did you take from YouTube?

23 A. Basically trailers from movies.

24 Q. Okay. And did you -- did -- who told you to do that?

25 A. I did it because I was required to -- I needed data in

1 order to use it for the application that I was working on.

2 Q. And did anybody else know that you were doing that at
3 Oculus?

4 A. Yes.

5 Q. Who did?

6 A. Brendan Iribe would know.

7 Q. Brendan Iribe?

8 A. Yes.

9 Q. Anyone else?

10 A. Nate would have known that I was also getting content from
11 YouTube.

12 Q. Okay. Anyone else?

13 A. At that time, I think they were the two main -- Palmer
14 Luckey probably knew as well. I'm sure I talked to him about
15 what I was doing -- what I was working on at the time.

16 Q. Okay. Do you recall the names of any of that type of
17 software that allows you to get videos off of YouTube?

18 A. I'm trying to think. At this point, I don't recall.

19 Q. Did you pay for that software?

20 A. No.

21 (End of video)

22 THE COURT: Do you-all have some more to play?

23 MS. WILKINSON: Yes, Your Honor.

24 MR. SAMMI: Yes, lines -- at the very end?

25 MS. WILKINSON: Yeah.

1 MR. SAMMI: Can we play -- I apologize for this --
2 236:16 to 17 and 236:19.

3 (Pause)

4 MR. SAMMI: It's the two -- can I have the line
5 numbers again?

6 MS. WILKINSON: Sure.

7 MR. SAMMI: Can I borrow this for a second?

8 MS. WILKINSON: Sure.

9 MR. SAMMI: This.

10 (Pause)

11 MR. SAMMI: 236, lines 16 through 17, and 236,
12 lines 19 through to 237, line 1.

13 (Pause)

14 MR. SAMMI: I wish I could play some elevator music
15 right now, Judge.

16 Can you explain -- Your Honor, may Mr. Lisy explain?

17 MR. LISY: I think there's just a question about
18 whether these designations were made, Your Honor. We don't
19 have an objection to them, so we will play them now.

20 THE COURT: Just play them.

21 (video played as follows:)

22 Q. Why did you need 3D trailers for the Oculus Rift Cinema
23 project?

24 A. I required 3D content in order to view movies in 3D on the
25 Rift.

1 Q. For what purpose?

2 A. It was part of a cinema application that was actually
3 within Unity that was built in Unity, and it was -- it required
4 content to be driven in 3D in order to -- proof of concept of
5 how it worked.

6 Q. Okay.

7 (End of video)

8 THE COURT: Is that it?

9 MR. SAMMI: Yes, Your Honor.

10 THE COURT: Everything on the video?

11 MR. SAMMI: Everything is on the video, Your Honor.

12 And may I move to enter two exhibits, PX1015 and

13 PX1074.

14 MS. WILKINSON: No objection.

15 THE COURT: All right. That are admitted into
16 evidence.

17 (Plaintiffs' Exhibit No. 1015 and 1074 received)

18 MR. SAMMI: Thank you, Your Honor.

19 THE COURT: Is that it? Do you have another movie?

20 MR. SAMMI: We have a live witness, Your Honor.

21 THE COURT: You do?

22 MR. SAMMI: We do. No technical difficulties there.

23 THE COURT: I don't know about that. We will see.

24 You never know.

25 Is this a long, short witness?

1 MR. SAMMI: I believe it's a longer witness, a long
2 witness, yes, sir.

3 THE COURT: A long witness?

4 MR. SAMMI: A long witness.

5 THE COURT: I will let you go another 40 minutes.

6 MR. SAMMI: Okay.

7 THE COURT: Call your next witness.

8 MR. PHILBIN: Your Honor, the Plaintiffs call
9 Mr. Palmer Luckey to the stand.

10 THE COURT: Okay.

11 (Pause)

12 THE COURT: Thank you.

13 MR. KARSON: Thank you, Your Honor.

14 (Pause)

15 THE COURT: Just a second, Mr. Luckey.

16 Mr. Jacobson.

17 THE CLERK: Raise your right hand.

18 (The witness was sworn)

19 THE COURT: All right. Mr. Luckey, take a seat right
20 there next to me.

21 Do you have any fresh water?

22 THE WITNESS: There's a water there. I will just use
23 that. I'm sure it will be fine.

24 THE COURT: Wait, wait, wait. We're not going to
25 have you do, you know, backwash. No, I'm not doing that. Give

1 me that.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Gosh. Mr. Sammi.

4 MR. SAMMI: It wasn't planned.

5 THE COURT: Come on.

6 MR. SAMMI: Of course, there is plenty of water.

7 THE WITNESS: Let me pre-break the cap so it is
8 ready.

9 THE COURT: Mr. Philbin, are you ready? Are you
10 going to need that screen?

11 MR. PHILBIN: Perhaps, Your Honor. I believe so.

12 THE COURT: We will turn it up just a little bit
13 until you get to that.

14 Okay. Go ahead, Mr. Philbin.

15 MR. PHILBIN: Thank you, Your Honor.

16 PALMER LUCKEY, PLAINTIFFS' WITNESS, SWORN

17 DIRECT EXAMINATION

18 BY MR. PHILBIN:

19 Q. Mr. Luckey, would you introduce yourself to the jury,
20 please?

21 A. My name is Palmer Luckey. I'm the founder of Oculus and
22 the designer of the Rift.

23 Q. You're Palmer Freeman Luckey, right?

24 A. Yes. I don't usually use that as part of my name, but it
25 is my middle name.

1 Q. You're one of the defendants in this case, correct?

2 A. Yes, I am personally named in this case.

3 Q. You founded Oculus in April 2012, correct, sir?

4 A. I started using the name internally sometime in late 2011,
5 and I started publicly using it in March of 2012, I think, and
6 I incorporated the company formally as a limited liability
7 corporation in June in preparation for the launch of my
8 Kickstarter.

9 Q. By April 2012, you were holding yourself out as the
10 founder of Oculus, correct?

11 A. I was the founder of Oculus.

12 Q. As early as April 2012, correct?

13 A. Like I said, I had been using it internally and privately
14 earlier. I first publicly started using it -- I think it was
15 of March 2012, not April, but it was around that time.

16 Q. Understood.

17 So we can move that date to when you publicly
18 announced you had founded Oculus as early as March 2012,
19 correct?

20 A. Yeah, that sounds right.

21 Q. And Oculus is another one of the defendants in this case,
22 correct?

23 A. Yes.

24 Q. And as you sit here today, you work for Facebook, correct?

25 A. That's right.

1 Q. And Facebook is another defendant in this case, correct?

2 A. Yes.

3 Q. And Facebook --

4 THE COURT: Stop. Stop, stop, stop. Turn his
5 microphone down.

6 Are you on?

7 THE CLERK: He's on.

8 THE COURT: He's just not loud enough.

9 MR. PHILBIN: Do I need to talk louder?

10 THE COURT: No.

11 who controls -- do we control his?

12 THE CLERK: I do.

13 MR. PHILBIN: Is that better?

14 THE COURT: That is a little too loud. There we go.
15 Okay. Keep going. We will work on it.

16 BY MR. PHILBIN:

17 Q. All right. Facebook acquired your company Oculus in 2014,
18 correct, sir?

19 A. That's correct.

20 Q. And as the founder of Oculus, you personally stand to make
21 over \$200 million as a result of Facebook's acquisition of
22 Oculus, correct, sir?

23 A. The amount of money depends on -- it's dependent on
24 whether I stay employed for several more years. There is also
25 a certain amount that gets paid out if we hit certain

1 milestones, and then it depends on what the Facebook stock
2 price is.

3 But it will probably end up being in the hundreds of
4 millions, assuming I continue to be employed and we hit all of
5 our milestones.

6 Q. Let's say you just stay employed. How much money do you
7 stand to receive as a result of the Facebook acquisition of
8 Oculus?

9 A. I'm not sure. I'm not sure exactly what the breakdown is.
10 Some of it was in cash. Most of it was in Facebook stock, and
11 the price goes up and down. I'm not exactly sure what it would
12 end up being, but it is in the hundreds of millions.

13 Q. In the hundreds of millions of dollars?

14 A. Yes.

15 Q. And you can't be any more accurate than in the hundreds of
16 millions of dollars?

17 A. Well, I mean, you're talking about if I was employed.
18 I'll have to be employed for several more years before this
19 hypothetical could play out, and so, yeah, I can't be more
20 accurate. I mean, Facebook stock has -- has gone up and down
21 significantly in the time since the acquisition, and it's even
22 longer until I hit all of my earnouts and vesting agreements.

23 Q. And can you tell the jury how much money you've made today
24 as a result of Facebook's acquisition of your company Oculus?

25 A. It's in the tens of millions.

1 Q. That's as accurate as you can guess, within 10 or
2 \$20 million?

3 A. So I got about 40 or \$50 million close to when the
4 acquisition occurred. I have gotten several tens of millions
5 more since then, much of which was in Facebook stock. I can't
6 be really accurate. I think it's -- it's in the tens of
7 millions. It's over -- it's over \$50 million for sure.

8 Q. And you stand to make hundreds of millions of dollars
9 more, correct?

10 A. Yes, I do.

11 Q. In 2012, you sent a headset to Mr. Carmack, correct?

12 A. Yes, I did.

13 Q. Was it on May 10, 2012?

14 A. That sounds like it's probably correct. I'm not sure if
15 that's the exact date.

16 Q. And you packaged your headset into a United States Postal
17 Service medium-sized box, flat rate Priority, correct?

18 A. That's not an accurate representation of the box.

19 USPS actually makes several different medium-sized
20 boxes in different shapes. Some are longer, some are boxier.
21 There are actually several different sizes, but they are all
22 USPS flat rate boxes.

23 That is a USPS flat rate box, but I guess my point is
24 that's not actually the same shape or size as the box that I
25 used, but it's pretty similar. I just wanted -- I just want my

1 testimony to be completely accurate.

2 Q. And we asked you under oath if you put what you sent to
3 Mr. Carmack in a USPS regular mailbox, and you answered United
4 States Postal Service flat rate Priority box, correct?

5 A. And what I'm saying is there is more than one USPS medium
6 Priority box. There are actually several different shapes and
7 sizes of box that are all classed under the medium flat rate
8 fee. There's also a small one, there's also a large one.

9 For example, I believe that there is a long and flat
10 wide mailer that is small. There is another that is kind of a
11 cube that is small. So just for the sake of being accurate, I
12 just want to point out that box is not an accurate
13 representation, but it is also a USPS Priority flat rate
14 medium -- medium-scale box.

15 Q. The box too tall?

16 A. It's actually just much too narrow. The box that I used
17 was one of the more squared ones. The headset wouldn't have
18 begun to fit into that particular box.

19 Q. So your box was wider and shorter?

20 A. Yeah. It was similar in size to the box that -- that the
21 prototype is currently housed in.

22 Q. We can agree that what you sent to Mr. Carmack was, in
23 fact, in a box, right?

24 A. Yes. I had to put it into a box so that I could send it
25 through the postal service and get it to him, because, well,

1 that's the best way to move physical goods.

2 Q. You were in the courtroom when Mr. Carmack testified about
3 what was in the box, correct?

4 A. Yes, I was.

5 Q. Did Mr. -- and Mr. Carmack testified about what was in the
6 box when he received it, right?

7 A. Yes, he did.

8 Q. Now, you know what was in the box when you sent it, right?

9 A. I do.

10 Q. So does Mr. Carmack's testimony about what was in the box
11 when he received it, does it match with what you understand was
12 in the box when you sent it?

13 MS. WILKINSON: Objection, Your Honor. He can ask
14 him what he thought was in the box. Characterizing somebody
15 else's testimony, I don't think, is appropriate.

16 THE COURT: Unfortunately, I had a little hard time
17 following all that. I'm sorry.

18 MR. PHILBIN: All right. Let me see if I can break
19 it down, Your Honor.

20 THE COURT: Try to simplify that a little bit for me.

21 MR. PHILBIN: Sure.

22 BY MR. PHILBIN:

23 Q. You were sitting in this courtroom when Mr. Carmack
24 testified what came out of the box?

25 A. Yes, I was.

1 Q. Okay. Now, when Mr. Carmack testified about what came out
2 of the box, does that match your understanding of what went in
3 the box?

4 A. Generally speaking. There were some things that weren't
5 discussed because you didn't ask about it. For example, the
6 thing that came to mind was that I had some packaging in there
7 and some shockproofing and things to make sure it didn't get
8 damaged.

9 Those weren't discussed because you didn't ask about
10 it. But, generally speaking, I think we're aligned on what was
11 inside of the box as far as things of significance go.

12 Q. So we're missing bubble wrap; is that right?

13 A. So bubble wrap -- also I believe I made some cardboard
14 spacers. If you've ever gotten a laptop in the mail, for
15 example, inside the box might be cardboard assemblies that kind
16 of go on the edge to make sure that it doesn't get crushed or
17 rattle around inside the box.

18 Bubble wrap, I don't think was one of the things that
19 I used, but it serves the same purpose, to protect the unit
20 from damage during transit.

21 Q. Did you put anything else in the box that Mr. Carmack
22 didn't testify came out of the box?

23 A. I'm not sure. I don't really remember all of
24 Mr. Carmack's testimony, but I don't think that there's
25 anything that we disagree on.

1 Q. Okay. And the substance of what you've put in the box was
2 your prototype, correct?

3 A. That is correct.

4 Q. And your prototype was basically a rectangular device,
5 correct?

6 A. Some parts of it were rectangular. It was actually
7 multiple rectangles that were put together. But, yeah, the
8 main housing was mostly rectangular with some rounded edges.

9 Q. And the rectangular with the rounded edges had a display
10 inside it, correct?

11 A. Yes, it did.

12 Q. In addition to the display in the rectangular box, there
13 was also a VGA control board; is that correct?

14 A. There was a display controller that basically takes the
15 video signals that come out of your graphics card and turn them
16 into the type of signaling that the display itself can use.

17 So you -- you could call it a VGA controller. More
18 technically speaking, it is a card that takes a VGA video input
19 and then converts it into an LVDS video signal that is able to
20 drive the panel directly.

21 Q. Did you invent any part of that?

22 A. I certainly didn't invent, you know, the concept of video
23 driver boards. The one that I was using was an off-the-shelf
24 board that you could flash with various firmwares that allowed
25 it to drive different displays.

1 So you could use this to drive a small display like I
2 did or you could also use it to drive a very large display
3 panel like is used in television. You just have to flash it
4 with the right firmware, with the right timings to drive it
5 over the LVDS link.

6 The one that I was using, I had flashed with the
7 proper firmware and also made quite a few modifications to it
8 to reduce the size and weight and also to make it more power
9 efficient because it was not really designed to be USB-powered.
10 It was designed to be powered originally off of a much higher
11 voltage power supply.

12 I -- just that I want to be clear. I don't -- I'm
13 not saying I invented it, but it certainly was not just a
14 generic off-the-shelf part. It had quite a few modifications
15 and things of my own design that I added.

16 Q. You trimmed down the size of some of the pins; correct?

17 A. That's one of the things I did, yes.

18 Q. And that's -- the chip inserts through a card, and there's
19 pins that stick out on the other side, correct?

20 A. That's one of -- that's one of the things on the board.

21 Basically, they're called through-hole components,
22 and there were some components -- one of the things I did to
23 reduce the size and weight was basically trim the leads of
24 components that stuck through the boards. So before they put
25 them through the board, you soldered them in place, and there

1 were bulges on the bottom of the board. I was able to trim all
2 of those off which made for a lower profile system.

3 Q. And the Rift prototype in this box had two lenses that
4 were mounted to the front faceplate, correct?

5 A. Yes, they were 7X aspheric magnifiers that were made out
6 of acrylic.

7 Q. And the prototype you put in the box also had neoprene
8 foam light covers on the outside to block out the light from
9 the outside world, correct?

10 A. Yes, that's correct.

11 Q. You put cabling in the box as well, correct?

12 A. It's not so much that it was cabling in the box. The
13 cabling was actually integrated with the head-mounted display.
14 The way that I designed, you didn't have a cable that you
15 plugged into the head-mounted display and then into your
16 computer. It was actually hardwired on one end directly to the
17 display control board, so you can think of it kind of like a
18 television or a monitor that has a cable that is permanently
19 built into it which allows it to be lighter and more
20 comfortable and ergonomic and also just saves the weight and
21 complexity of having a connector that can go bad.

22 Q. A cabling plugged into the display, correct?

23 A. Well, not -- not plugged -- not -- if it had had -- had
24 it, then yes. My point is there was no plug for any cabling on
25 the head-mounted display. Basically it was a plug on one end

1 of your graphics card. The cable then ran to the head-mounted
2 display where the cable was wired directly to the display
3 controller board.

4 Q. Understood.

5 And the display on the headset that was in this box
6 was a generic 5.6-inch LCD display, correct?

7 A. I wouldn't describe it as generic. I mean, you -- it was
8 a 5.6-inch display that was originally designed for the
9 ultra-mobile PC market. It was designed by BOE Hydis for use
10 in the Fujitsu U810 ultra-mobile PC which was essentially a
11 very small laptop. And at the time it was a very high
12 resolution, high refresh rate display with really high color
13 depth for something of that size and weight.

14 But I wouldn't call it a generic display. I'm not
15 sure what would be generic about it.

16 Q. You didn't build the display, did you?

17 A. No.

18 Q. You bought it off the shelf, didn't you?

19 A. Yes. Display fabrication is something that -- well, the
20 costs usually go in -- at least in the tens of millions and
21 often up into the billions to build a fabrication line. Very
22 few people can claim that they have made a display themselves.
23 Samsung would be one of the very few exceptions, for example.

24 Q. You didn't alter the latency characteristics of the
25 display panel, did you, sir?

1 A. I mean, no, the display panel itself didn't have any
2 latency characteristics altered. The display controller is
3 actually usually where latency is introduced in a video display
4 system. The panel itself is kind of a known quantity. What
5 you get is what you get.

6 You can overdrive it using -- you can basically tell
7 your graphics card to overdrive it and try to get it to switch
8 values faster, but there's not much you can do to a panel to
9 actually make it switch faster. You can modify it to be
10 lighter or to have higher brightness or to be stronger, which I
11 did do on this particular panel, but there's not really much
12 you can do in most cases to modify a panel to be lower latency.

13 Q. So the answer to my question is no, you didn't modify the
14 latency characteristics, correct?

15 A. Yes. I just wanted to give background.

16 Just to make clear, it's not the type of thing that
17 you really can modify on a display. Like, the display is made
18 with -- the display is made to be driven and switched at a
19 given speed. Generally speaking, you can't modify a display to
20 make it go faster. There are, of course, exceptions.

21 Q. You didn't build the VGA card either, did you, sir?

22 A. No. I purchased a -- I purchased the display controller
23 from a vendor online and then performed my modifications on it.

24 Q. It was a general purpose card, correct?

25 A. I would say it was more of a universal card than general

1 purpose, in that it can -- it can only provide one purpose
2 based on which firmware you have flashed on it at any given
3 moment. Once you do that, it is specialized, but you're able
4 to make it work with a lot of different things.

5 Q. In this case didn't you testify that you didn't build the
6 VGA card. It was a generic general purpose card?

7 A. I could imagine myself describing it that way if the
8 question were asked in a certain way.

9 Q. When you were asked, did you build the VGA card -- would
10 you like to see it?

11 A. I don't need to see it. I'm very familiar with what it is
12 and what it looks like.

13 Q. No, I'm talking about your deposition. would you like to
14 see your prior sworn testimony where you were asked, "Did you
15 build the VGA card?"

16 And you first answered, "The what?"

17 And then the question was, "The VGA card."

18 And then your answer was, "I did not build the VGA
19 card. It was the generic general purpose card."

20 would you like to see that testimony or is that --

21 A. No, no. I believe it. Like I just said, I did not
22 build it.

23 THE COURT: Stop.

24 MS. WILKINSON: Your Honor, just for proper purposes,
25 I think if we could have a page and line number --

1 MR. PHILBIN: Sure.

2 MS. WILKINSON: -- to follow along.

3 MR. PHILBIN: It's Mr. Luckey's deposition from
4 January 26, 2016, starting on page 90 at line 10 through
5 line 14 and 15.

6 MS. WILKINSON: Thank you.

7 MR. PHILBIN: You're welcome.

8 BY MR. PHILBIN:

9 Q. Do you stand by that testimony, sir?

10 A. Yes, I do.

11 Q. And the lenses -- the lenses that you put in the box cost
12 you less than \$10.00 a piece, correct?

13 A. I'm not -- I'm not sure, but I -- that's in the right --
14 that's in the right ballpark.

15 Q. One of the problems with using cheap lenses is that there
16 is significant geometric distortion, correct, sir?

17 A. It's not a problem with cheap lenses. It's a problem with
18 high magnification lenses in general. Like, whether they're
19 cheap or not, expensive or not, if you only have a single
20 element -- an element is an -- an element is just basically a
21 single lens component, not, you know, multiple lenses in a
22 stack.

23 It's not the expense that determines it. If you only
24 have one lens element and you want to have high magnification,
25 which you need to reproject a wide field of view image, you're

1 generally going to have a lot of geometric distortion. But I
2 just want to be clear it's not a matter of the cost. It's a
3 matter of how much magnification you want to try to give -- get
4 out of a lens, and you can change that slightly depending on
5 the materials that you use for the lens. But it's not -- it's
6 not a matter of the cost of the lens. It's more a matter of
7 that particular type of lens using a single high magnification
8 optic.

9 Q. Are you finished?

10 A. Yes, I am.

11 Q. Okay. Let's ask it this way.

12 Using the lenses that you put in the box that you
13 sent to Mr. Carmack, was one of the problems with using those
14 lenses that there was significant geometric distortion?

15 A. I mean, you -- you could describe it as a problem. It's
16 more that that's the fundamental aspect of the design. I mean,
17 optics is basic -- optical design is essentially a matter of
18 trade-offs. You have to decide between things like wide field
19 of view, low weight and geometric distortion, chromatic
20 aberration. And it wasn't so much a problem that these lenses
21 had distortion that needed to be solved, that was the intent of
22 the design.

23 The intent of the design was to optimize the hardware
24 to be high performing -- high performing in the things that
25 could only be solved in hardware, so high field of view, low

1 cost, lightweight and then to solve for other problems like
2 geometric distortion in software.

3 It -- it's not really a problem as much as just an
4 innate characteristic of that design.

5 Q. And that's a characteristic that needed to be solved using
6 software, correct?

7 A. Well, it had been solved using software. I mean, like I
8 said, that was an innate part of the design. I designed the
9 headsets to -- explicitly to trade off having that distortion
10 against having high field of view and low cost.

11 Q. That trade-off resulted in significant geometric
12 distortion, correct?

13 A. Well, I mean, that -- it's not that the trade-off resulted
14 in that. That is the trade-off. The trade-off is distortion
15 and these other characteristics all competing with each other
16 in one design.

17 Q. Another problem with the lenses you chose to put in the
18 device that went in the box was that those lenses had
19 significant chromatic aberration, correct?

20 A. They were actually pretty good. They were -- they were --
21 they were actually asphere optics with pretty minimal chromatic
22 aberration. I mean, that's why when we actually used the same
23 lenses later for Gear VR prototypes, we never really bothered
24 correcting for it because it wasn't a huge factor in those
25 lenses.

1 So chromatic aberration was actually pretty good in
2 those lenses, but again, it's not a problem with them so much
3 as just the trade off against the other -- other -- other
4 aspects of the design.

5 Q. And is it your testimony in this case that the geometric
6 distortion in the chromatic aberration problems were not
7 corrected using software that Mr. Carmack wrote?

8 A. I mean, his -- his software did implement the correction
9 required to view properly through the Rift. I'm not testifying
10 otherwise. I don't think anyone is.

11 Q. So you would agree with me, then, that the software that
12 Mr. Carmack wrote to turn what was in the box into virtual
13 reality solved geometric distortion and chromatic aberration,
14 correct?

15 A. Well, I would say that he implemented, not that he solved
16 it. Many other people had done this and not just
17 hypothetically. Even running on my headsets many people had
18 done this, so I wouldn't say that he solved the problem and
19 made it work. This was a working device. It had certain
20 characteristics you needed to write to and his software did
21 implement those -- those particular characteristics, but I
22 would not say that it was, you know, the thing that solved it
23 and made it work. It was something that other people -- it's
24 hard to say that you've solved the problem when you've
25 basically written a piece of software to work a certain way to

1 work on something.

2 Like, if you had an iPhone and it required that you
3 use a certain line of code to initialize your application on
4 the iPhone, you would not say, ah, you wrote an application
5 that solved the problem of launching on an iPhone. You would
6 say you implemented the code that you needed in order to run on
7 an iPhone, and that's what -- not just John but other people
8 also had done.

9 Q. You didn't write any software to correct, one, geometric
10 distortion; or two, chromatic aberration using the device that
11 was put in the box, correct?

12 A. No. I'm not a software engineer, but I had worked with
13 teams that did implement those things, and we used third party
14 utilities to correct for distortion as well.

15 Q. Well, were you here when Mr. Carmack testified about
16 massive fisheye distortion?

17 A. Yes, I was.

18 Q. And the massive fisheye distortion that Mr. Carmack was
19 talking about was the distortion that existed when the device
20 came out of the box, correct?

21 A. Yes, that's correct.

22 Q. And the solution to the massive fisheye distortion was
23 what Mr. Carmack added while he was at id, correct?

24 A. Again, you know, that's the whole point of the design.
25 It's designed specifically to have wide field of view, low cost

1 and low weight, at the expense of high distortion. This was
2 not a problem that was solved. It's an innate characteristic
3 of the device.

4 Q. Perhaps you didn't understand my question.

5 The solution to the massive fisheye distortion was a
6 solution that Mr. Carmack added while he was at id to your
7 device that came out of the box, correct?

8 A. I mean, if you want to ask it that way, no, it's not the
9 solution. There's many ways to implement it -- implement
10 geometric distortion correction. His software did have
11 geometric distortion correction in it, and he did implement it
12 in his own way. But you -- I would not say that is the
13 solution to the problem.

14 Again, this is something that people had been doing
15 for years with my devices. It was well known, well understood.
16 What he did was -- I guess you could call it a solution, but
17 you would not call it the solution to the problem, if I'm
18 understanding you correctly.

19 Q. The only solution that was in the prototype that went to
20 E3 was a solution to massive fisheye distortion that
21 Mr. Carmack wrote while he was employed at id, correct?

22 A. As far as I know, the only thing that he was using in his
23 game was his code. I mean, he was at E3 showing off his game.
24 I would assume that he used his code and not the distortion
25 correction that had been done by other people.

1 Q. HMD stands for head-mounted device, correct?

2 A. No, it does not.

3 Q. What does HMD stand for?

4 A. It generally stands for either head-mounted display or, in
5 some military applications, helmet-mounted display.

6 Q. Okay. The headset that you sent to Mr. Carmack in the box
7 didn't even have a strap, did it?

8 A. No, that unit did not.

9 Q. And it didn't have anything that mounted the display or
10 the device to the head, did it?

11 A. Well, the -- I mean, the neoprene foam on there was part
12 of the facial interface, and it was designed to have a strap on
13 it. That particular unit just didn't have one on it, so no, I
14 wouldn't say it didn't have anything to attach it to the head.
15 It just didn't actually have a head mounting device on that
16 particular unit.

17 Q. So if we took what came out of the box and held it up to
18 our face and turned loose of it, it wouldn't be mounted to my
19 head, would it? It would fall on the floor?

20 A. That's correct.

21 Q. And there was no head tracker in the head-mounted display
22 in the box that you sent to Mr. Carmack, right?

23 A. Right.

24 Q. And a head tracker is what's used to sense when your head
25 moves, right?

1 A. Yes.

2 Q. So if I have a head tracker and I move to the right, that
3 senses that my head has moved to the right, correct?

4 A. Yes. And that could be rotationally to the right or, you
5 know, translationally to right.

6 Q. And by translationally, that would be like if I did a step
7 to the side; is that correct?

8 A. Yes. And -- the sensor that John was using couldn't
9 detect translation, but I just want to be clear there's two --
10 moving to the right could mean one of two things, and there are
11 sensors that are able to do both.

12 Q. And let's be clear. You said the sensor that John was
13 using, correct?

14 A. Yes.

15 Q. That's Mr. Carmack, right?

16 A. Yes. I believe the Hillcrest Labs sensor.

17 Q. And the sensor that you had in the box was none, correct?

18 A. No, I did not have a sensor on the -- on the unit that I
19 sent him.

20 Q. Okay. So if we plugged in the unit that you put in the
21 box and we got, say, the screen from your computer to show up,
22 correct?

23 A. It would show up. It would be split between both eyes.
24 The Rift wasn't designed to be used with a standard desktop or
25 standard applications. You have to make applications that are

1 written specifically for it in order view them correctly.

2 Q. And then if the user using the device as it came out of
3 the box turned their head to the right, what would happen?

4 A. That entire -- that depends entirely on the application
5 you would have attached and any -- and the sensor, if any, that
6 you had attached.

7 Q. Oh, but since there is no sensor -- I'm talking about as
8 it came out of the box from you. Using what came out of the
9 box from you, if I'm looking at something on my screen and I
10 turn my head to the right, does anything change?

11 A. It would depend on the application, but, you know,
12 generally no. If you hooked up an application that was not
13 hooked up to any kind of other motion tracker and it was just
14 running on the display, it would remain static.

15 Q. And so using your device as it came out of the box when
16 the user turns their head either to the right or to the left,
17 nothing changes because there is no sensor, correct?

18 A. Well, that is the case. I mean, you could say that about
19 most virtual reality displays. I mean, most virtual reality
20 displays are sold without a head tracker. I worked in
21 professional virtual reality before I --

22 Q. I'm not asking about most virtual reality displays. I'm
23 talking about your display in the box.

24 A. Again, if you will give me just a moment.

25 My point is that you say when this head-mounted

1 display is hooked up, nothing happens. I'm saying that is very
2 typical of a head-mounted display. Typically, it does have to
3 be hooked up to two things. It needs a motion tracker, and it
4 needs an application that is designed to run on the
5 head-mounted display.

6 If you don't have either of those things, then it's
7 not going to do anything when you move your head.

8 Q. Okay. Are you finished?

9 A. Yes, I am.

10 Q. Okay. Now, I would like to focus you on the device you
11 put in the box and you sent to Mr. Carmack. Using just what
12 was in your prototype, can we agree that when you move your
13 head, nothing changes?

14 A. Yes.

15 Q. And can't we also agree that a fundamental principle in
16 order for something to be considered virtual reality is when
17 you move your head, what you see changes?

18 A. If you're referring to the overall concept, yes. If
19 you're referring to, say, a virtual reality display or
20 head-mounted display, I just want to be clear that, no, that is
21 not necessarily part of it.

22 But as a system, including the software, the
23 hardware, the motion tracking, yes, virtual reality requires
24 some form of head tracking.

25 Q. Otherwise, it is just a monitor mounted close to your

1 face, isn't it?

2 A. Not exactly. I mean, you still have a very wide field of
3 view. You still have the ability to display stereoscopic
4 images that are the same size and scale of the real world, and,
5 of course, you are blocking out the outside world. So without
6 a head tracker you may not be able to call it virtual reality,
7 but it's certainly more full-featured than a monitor, which is
8 why so many companies have sold head-mounted displays without
9 head tracking. They are not VR devices, but they are much more
10 than just a monitor.

11 Q. And you mentioned field of view. Let's talk about that
12 for a minute. Okay?

13 If I'm standing here and watching my television over
14 there on the wall, my field of view is calculated from where
15 I'm standing to where the television is, correct?

16 A. Yes. Usually in degrees.

17 Q. So let's say I'm 20 feet away from my television. I would
18 have a certain degree of field of view, correct?

19 A. Sure. Like if you had a regular-size television on that
20 wall where you're standing, you might be seeing a 10- or
21 20-degree field of view horizontally.

22 Q. If I wanted to increase the field of view from 10 or
23 20 degrees up to 40 or 50 degrees, I could just walk toward the
24 TV, correct?

25 A. Yes, you could.

1 Q. And if I wanted to increase it up to 170 degrees, even
2 though I encourage my children not to do this, I could walk all
3 the way up to TV, correct?

4 A. There are other practical limitations, like viewing
5 angles, that would make that probably not practical. Like, if
6 you stand right next to a display, the angle that the panel can
7 display proper colors is going to be off, so it wouldn't work.
8 But, generally speaking, yeah. Not all the way up to 170 but
9 maybe up to -- maybe, let's say 90 degrees or 100 degrees or
10 something like that it would work.

11 Q. So when we talk about field of view, another way of
12 thinking about that is how close we are to the TV, right?

13 A. Not exactly. Getting closer to the TV doesn't just make
14 it larger. It also means that you're having to focus much
15 closer.

16 So with a virtual reality device, you're generally
17 collimating the light and refocusing it in a certain plane. So
18 with the TV that you are standing right next to -- let's say
19 you are standing right next to a small TV and getting a
20 100-degree field of view, your eyes are going to be converging
21 on the TV up close and also focusing on the TV up close.

22 with a virtual reality device, generally speaking,
23 that's not the case. The -- the image is reprojected out at
24 least a few meters, sometimes out to infinity. So that's
25 really the big difference.

1 Like, in terms of just the degrees of field of view,
2 yes, you will get more degrees, but all of the other
3 characteristics of vision, there is a big difference between a
4 head-mounted display and just standing close to a TV.

5 Q. So if we're just talking about a field of view, we could
6 increase our field of view by walking closer to the TV,
7 correct?

8 A. Yes.

9 Q. Thank you.

10 Now, were you at E3 when what was in the box was
11 displayed after Mr. Carmack's modifications?

12 A. No, I was not.

13 Q. Do you have any knowledge about what was displayed at E3?

14 A. I do.

15 Q. Mr. Carmack's presentation at E3 took what you sent him in
16 the box, added hardware, correct?

17 A. Yes. He attached a Hillcrest sensor and also a Scott ski
18 goggle strap, I believe.

19 Q. He also added software, correct?

20 A. I wouldn't say he added software to the device I sent
21 them. I would say he ran that software on that device. I
22 understand it's semantic, but it's important.

23 Q. And the software that Mr. Carmack ran in connection with
24 the device used the input from the sensors that he had added to
25 change what you saw when you moved your head, correct?

1 A. Exactly.

2 Q. So the device that you sent in the box wouldn't change
3 when you moved your head, and Mr. Carmack fixed that, correct?

4 A. He -- again, it's not a problem with a head-mounted
5 display that you fix, it not having a motion sensor. This is
6 why I took pains earlier to point out that most of the
7 head-mounted displays, you have to have a motion sensor.

8 You keep saying this is a problem he fixed. What I'm
9 saying is he wrote a piece of software that used head tracking
10 and HMD. That's not fixing a problem with the HMD. That's
11 choosing to display software with head tracking, which, again,
12 I did not have a head tracker on the unit that I sent to John
13 in that box.

14 Q. Let me try it a different way. If you quibble with the
15 word "problem," let's call it feature. A feature of what you
16 put in the box was when you moved your head, nothing changed,
17 correct?

18 A. Well, no, you wouldn't say that either. If something
19 doesn't do something, you don't call it a feature. It's not a
20 quibble with the term "problem"; it is problem and then fixing.
21 I'm saying it is not a problem that was fixed.

22 You know, if -- if you were to make a rectangular
23 image that displayed on a TV and you wanted to show a certain
24 thing, you wouldn't say that it solved the problem of showing a
25 rectangular image. You would say, oh, well, you know, you did

1 it the way you wanted to do it.

2 John wanted to show a piece of software that utilized
3 head tracking, and so he attached a head tracker, but that was
4 not a problem that was fixed with my device.

5 Q. I understand.

6 Mr. Carmack added the feature of tracking head
7 movement and changing what you see in the display based on the
8 head movement, correct?

9 A. Yes, I would agree with that.

10 Q. Because your device didn't have it, correct?

11 A. The one that I sent in the box did not have it, that's
12 correct.

13 Q. You had no input on the choice of head trackers that
14 Mr. Carmack used, did you, sir?

15 A. No, I was aware that he was using the Hillcrest tracker.
16 I don't think I ever gave him any feedback that he should use
17 anything else. But we did discuss head tracking on the MTBS3D
18 forums on several other things.

19 Q. You didn't tell Mr. Carmack which head tracker to choose
20 on the device he used at E3, did you, sir?

21 A. No, I did not.

22 Q. And Mr. Carmack wrote software code for head and neck
23 model for the device that was shown at E3, correct?

24 A. Well, a head and neck model was more related -- it is in
25 the software, and it is relating to actually, basically, the

1 relationship between your neck, your head, and how you move
2 than anything with the HMD.

3 So his software did have a head and neck model, but I
4 wouldn't say that it was for the HMD.

5 Q. There was no head and neck modeling software in the box
6 when you sent it to Mr. Carmack, correct?

7 A. That's correct.

8 Q. And at E3 there was head and neck modeling software used
9 with the demonstration at E3, correct?

10 A. That's correct.

11 Q. So from the time he received the box till the time it got
12 to E3, any head and neck modeling was done by Mr. Carmack,
13 correct?

14 A. I mean, in his software. I don't want to say that he was
15 the only one doing -- that any head and neck modeling was done
16 by him. It's a concept that has been well understood and used
17 in the virtual reality industry for decades, but in his
18 particular demo, as far as I know, he was the only one
19 implementing head and neck modeling.

20 Q. And there was also distortion correction software in the
21 demonstration at E3, correct?

22 A. Yes.

23 Q. And there was no distortion correction software code in
24 your box when you sent it to Mr. Carmack, correct?

25 A. That's correct.

1 Q. So any distortion correction source code that was used in
2 the demonstration at E3 came from Mr. Carmack while he was at
3 id, correct?

4 A. I assume so.

5 Q. You don't have any reason to testify any other way, do
6 you?

7 A. No, I don't.

8 Q. And you didn't write any of the distortion correction code
9 that Mr. Carmack used at E3, did you, sir?

10 A. No, I did not.

11 Q. In fact, you didn't give Mr. Carmack any software that he
12 used when demonstrating a headset at E3 in 2012 other than what
13 may have been on the video card when you bought it, correct?

14 A. The display control board, yes.

15 Q. And would you agree with me, sir, that it was only with
16 the additions from Mr. Carmack, including motion sensing and
17 software, did the headset at E3 actually provide a virtual
18 reality experience?

19 A. Yes.

20 Q. The E3 demonstration was shown in ZeniMax's booth,
21 correct, sir?

22 A. It was either a booth or a meeting room. I'm not sure.

23 Q. And is it your understanding that the E3 demonstration was
24 shown by special appointments only?

25 A. I was -- I was told that he would be showing -- that he

1 had a few private demos that he wanted to give. My
2 recollection is that it's by appointment, but I don't really
3 know one way or the other.

4 Q. Because you weren't there, right?

5 A. That's right.

6 Q. But you knew ahead of time that Mr. Carmack was going to
7 show a demonstration of the headset that he had written
8 software for and modified at E3, correct?

9 A. He told me that he was going to be giving a few private
10 demonstrations, and he had given one or two to outlets actually
11 before E3 as well, so I was aware.

12 Q. Would you agree that Mr. Carmack's demonstration of the
13 headset that he added hardware and software to while he was at
14 id garnered widespread media attention?

15 A. Yes, I would.

16 Q. Would you agree with "that demonstration was a
17 breakthrough moment in virtual reality technology"?

18 A. Not necessarily. I guess you could call it a breakthrough
19 moment maybe in awareness. I don't -- I don't know if it would
20 be properly considered a breakthrough moment in the technology.

21 Q. Now, prior to E3, you hadn't met Mr. Iribe, had you?

22 A. No.

23 Q. And you hadn't met -- hang on -- any of the other founders
24 of Oculus; is that correct?

25 A. That's correct.

1 Q. You didn't arrange for any of the press interviews with
2 Mr. Carmack leading up to E3, correct?

3 A. No.

4 Q. And prior to E3, you hadn't met Nate Mitchell or
5 Mr. Antonov, correct?

6 A. That's correct.

7 Q. You didn't pay for any of the booth space at E3 that
8 Mr. Carmack demonstrated the headset as he had modified it,
9 correct?

10 A. No. That was their booth.

11 Q. And you didn't discuss with Mr. Carmack in advance how the
12 demonstration should be run at E3 in 2012, did you, sir?

13 A. I mean, we did discuss it. Not in any kind of, you know,
14 detail, but we -- we did discuss what he was going to be doing
15 and how they would be given. I -- I was certainly not telling
16 him how to show off his game.

17 Q. Can we agree that you didn't write any of the software on
18 the device that Mr. Carmack demonstrated at E3 that garnered so
19 much media attention?

20 A. Just to be clear, there wasn't -- there was software that
21 was viewed through the device. It was not software necessarily
22 on the device, but --

23 Q. All right.

24 A. -- but I just want to make sure we understand each other.

25 But, no, I did not write any of the software that was

1 being shown on the device at E3.

2 Q. Let me rephrase.

3 Mr. Carmack did a demonstration at E3, correct?

4 A. Yes.

5 Q. And in order to do that demonstration, it required
6 software, correct?

7 A. I mean, the demonstration was of software, so yes.

8 Q. And you didn't write any of the software that was used in
9 the demonstration at E3, correct?

10 A. That is correct.

11 Q. And you would agree with me, wouldn't you, sir, that
12 Mr. Carmack demonstrated something at E3 in 2012 that did not
13 come exclusively from you, correct?

14 A. Yes, that's correct.

15 Q. You would agree with me, wouldn't you, sir, that software
16 was the most difficult aspect of the Rift to implement at that
17 time?

18 A. That phrase regarding the context really depends. I mean,
19 if you're talking about creating a game, then certainly. If
20 you're talking about making a product, I would take issue with
21 that. I would say the hardware side is very difficult if
22 you're talking about actually making a product that you can get
23 to people.

24 I would have to know the context of that to know
25 whether I agreed with it or not.

1 Q. You're not a software guy, are you?

2 A. No. I think of myself as a hardware guy.

3 Q. And, in fact, you would never call yourself a software
4 person, correct?

5 A. You know, again, that would depend on who I'm talking to.
6 To my friends and family, I'm very much the software guy. I'm
7 the computer guy. I'm the guy who knows all about software.
8 But in relation to people like John Carmack, no, I'm definitely
9 not a software guy. My focus is very much on the hardware side
10 of things even though I do know a bit about software.

11 Q. Have you publicly stated that you're not a software guy?

12 MS. WILKINSON: Your Honor -- objection, asked and
13 answered.

14 THE COURT: Sustained.

15 BY MR. PHILBIN:

16 Q. You don't consider yourself a programmer, do you, sir?

17 A. No, I do not. My -- my -- I've done some programming, but
18 I definitely would not consider myself a programmer. And it's
19 not my passion.

20 Q. And programming is not even one of your core competencies,
21 correct?

22 A. No, it is not.

23 Q. You'd consider yourself more of a hardware person,
24 correct?

25 A. That's right.

1 Q. And, in fact, before Mr. Carmack saw your work, you
2 considered yourself a hobbyist working on your own stuff,
3 correct?

4 A. I was a hobbyist. I was also an engineer working at a
5 university VR research lab, but, I mean, it is true that I'm a
6 hobbyist. I just want to make sure that we're not
7 characterizing that as the only thing I thought of myself as.
8 I was also working professionally on virtual reality hardware.

9 Q. And haven't you characterized it as you felt blessed to
10 hear from John Carmack at id to use what you put in the box?

11 A. I'm not sure if I said "blessed" in relation to that, but
12 generally, yes, I -- that sounds like something I might've
13 said.

14 Q. All right. You signed an NDA in this case, didn't you,
15 sir?

16 A. I signed an NDA independently of this case. It's now part
17 of this case, yes.

18 MR. PHILBIN: Okay. Can we pull up PX2, Mr. Frank?
19 Can we go to page 3?

20 BY MR. PHILBIN:

21 Q. Start right here. This is a nondisclosure agreement,
22 correct?

23 A. Yes.

24 MR. PHILBIN: And can we scan down to the bottom,
25 Mr. Frank? I believe it's page 6.

1 BY MR. PHILBIN:

2 Q. Is that your signature there on the right of page 6 of
3 PX2?

4 A. Yes, it is.

5 Q. No one signed that on your behalf, correct?

6 A. No, it was me.

7 Q. And prior to signing PX2, you read it and understood it,
8 correct?

9 A. I did.

10 MR. PHILBIN: Mr. Frank, could we go back up to the
11 top on the recitals?

12 BY MR. PHILBIN:

13 Q. While we're doing that, you understood the purpose of the
14 NDA was to call things out as confidential and keep them
15 protected as confidential, correct?

16 A. That's correct.

17 Q. And you understood the purpose of a nondisclosure
18 agreement at the time you signed it, didn't you, sir?

19 A. I did.

20 Q. And the first purpose is in the name, nondisclosure,
21 correct?

22 A. Yes.

23 Q. And the very purpose of entering into a nondisclosure
24 agreement is to get someone's agreement that you're going to
25 share information with that they promise not to disclose it,

1 correct?

2 A. Yes.

3 Q. And you take NDA or nondisclosure agreements seriously,
4 don't you, sir?

5 A. I take them very seriously.

6 Q. And you understood at the time you signed Exhibit 2, the
7 nondisclosure agreement in this case, that it was a binding
8 contract with ZeniMax, didn't you, sir?

9 A. Yes, I did.

10 Q. And in entering into a binding contract, it's very
11 important to understand what you're signing, correct, sir?

12 A. Yes.

13 Q. And did you treat the nondisclosure agreement that you
14 signed with ZeniMax with the same scrutiny and seriousness that
15 you've treated other NDA's you've signed?

16 A. I don't know if I treated it with the same -- for example,
17 I've signed nondisclosure agreements to get access to, like,
18 beta testing for video games online, and, you know, you don't
19 generally read those. You just scroll through, click okay, and
20 you don't share with anybody.

21 I'd say I treated this one probably more seriously
22 than other NDAs that I had signed in the course of, you know,
23 clicking the terms of service on stuff in the past.

24 Q. Would you agree that the nondisclosure agreement you
25 signed in this case was one you treated with the highest level

1 of sincerity?

2 A. Yes, I was completely sincere.

3 THE COURT: All right. This is a good stopping
4 point.

5 Don't talk about the case.

6 Be back at 9:00.

7 See y'all in the morning.

8 SECURITY OFFICER: All rise.

9 (Jury out)

10 (Recessed for the day at 4:37)

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1 I, TODD ANDERSON, United States Court Reporter for the
2 United States District Court in and for the Northern District
3 of Texas, Dallas Division, hereby certify that the above and
4 foregoing contains a true and correct transcription of the
5 proceedings in the above entitled and numbered cause.

6 WITNESS MY HAND on this 17th day of January, 2017.

7
8
9 /s/Todd Anderson

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